



## "A Return to Dignity"

On Friday, March 1, 2002, state and community advocates, along with mental health consumers and local volunteers, gathered at the Bryce Mansion in Tuscaloosa to kick off the Bryce Cemetery Restoration Project. The Restoration Project is an effort to restore dignity to those buried in Bryce Cemetery by mapping and identifying the long-neglected graves.

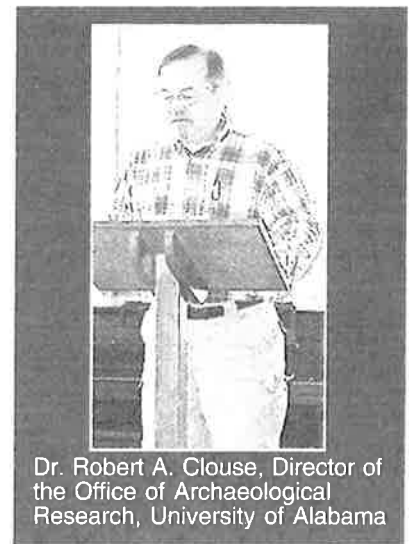
The project began many months ago with the hope of finding a way to bring honor and dignity to the Cemetery and its inhabitants. Over time the Cemetery has been vandalized and robbed of many of its markers,



Reuben W. Cook, Director of ADAP, Kim Ingram, Associate Commissioner of The Alabama Department of Mental Health and Mental Retardation, and Ann Marshall, State Chairperson for Bryce Cemetery Restoration and Coordinator of Outreach and Training for ADAP. Original crosses from the Cemetery are in the background.

both for their beauty and unique designs. The years have taken their toll on the Cemetery. Jack Warner Parkway, formerly River Road, was cut through the Cemetery, and trees and underbrush have been allowed to reclaim many of the graves.

The project is getting started with \$5000, which has been collected through private donations. The University of Alabama has also added resources and needed expertise. Dr. Robert A. Clouse, Director of the Office of Archaeological Research, and Steve Jones with Ar-



Dr. Robert A. Clouse, Director of the Office of Archaeological Research, University of Alabama

### CONTENTS

U.S. Supreme Court Opinions Erode Disability Rights .....	4
State Advocacy Organizations Select New Leaders .....	6
Things Are 'A Changin' At ADAP .....	7
Legislative Report .....	8
Surfing .....	8



Rebecca Poole, Director of Mental Health Consumers of Alabama, holding one of the Cemetery crosses.

the use of ground penetrating radar. Volunteers from Dr. Randall Jarrell's Psychology Class at Shelton State Community College are playing a major role in cutting, clearing and cleaning the Cemetery.

The Cemetery Restoration Project's plans for the next year include production of a book about the Cemetery and its history. The group is also developing an application for the Cemetery to be placed on the National Register of Historic Places. Bryce Hospital is on the historic list but that designation did not include the Cemetery. The state group is also exploring an oral history project and ways to preserve century-old records of patients buried at the Cemetery.

Chairing the state-wide coalition is Ann Marshall, ADAP's Coordinator of Outreach and Training.

To assist in the cleanup project as an individual or a group, please call 1-800-826-1675. Contributions are welcomed and needed, and you may send them to: Mental Health Association in Tuscaloosa County, P.O. Box 1731, Tuscaloosa, AL, 35403. Donations are tax de-



Ross Perdue, Social Security Advocate for ADAP; Irine McNeil and Angie Golden, both of Mental Health Consumers of Alabama.

ductible. Art posters depicting the iron grave markers at Bryce Cemetery are also available with foam backing for \$35 or without backing for \$15. To purchase a poster, please contact the 800 number listed or the Mental Health Association at 205-752-2689.

Alabama Disabilities Advocacy Program (ADAP) is the federally mandated, statewide "Protection and Advocacy" system serving eligible individuals with disabilities in Alabama.

**Director - Reuben W. Cook**  
**Associate Director - Ellen Gillespie**

*Airmail* is published by ADAP, The University of Alabama School of Law, Clinical Law Programs.

*Airmail* provides information on issues and events of interest to people concerned about the rights of persons with disabilities. Organizations and individuals are encouraged to submit articles to be considered for publication. Inquiries may be sent to Segail I. Friedman, Information Specialist, at the address below.



Box 870395  
Tuscaloosa, AL 35487-0395  
205-348-4928 - V/TTY  
205-348-3909 - FAX  
800-826-1675 - V/TTY  
e-mail: ADAP@law.ua.edu  
website: <http://www.adap.net>



Joan Brown, Mental Health Association in Tuscaloosa County, Irine McNeil, Mental Health Consumers of Alabama (MHCA); Rebecca Poole, Director of MHCA; Pamela Trammell, MHCA; Segail Friedman, Information Specialist, ADAP, and Ann Marshall, State Chairperson, Bryce Cemetery Restoration Project and Coordinator of Outreach and Training for ADAP.

Photo compliments of  
*The Tuscaloosa News*

**Groups supporting the effort include:**  
**The Mental Health Consumers of Alabama**  
**Alabama Disabilities Advocacy Program**  
**Mental Health Association in Tuscaloosa County**  
**University of Alabama Office of Archaeological Research**  
**Shelton State Community College**  
**Bryce Hospital**  
**National Alliance for the Mentally III – Alabama Chapter**  
**Alabama Department of Mental Health and Mental Retardation**  
**Zonta Club of Tuscaloosa**  
**Indian Rivers Community Mental Health Center**  
**Alabama Council of Community Mental Health Boards**  
**Mental Health Association in Alabama**



Shelton State Community College Volunteers



Joe Lieb of Office of Archaeological  
Research, University of Alabama



Volunteer



Dr. Randall Jarrell and students

# U.S. SUPREME COURT OPINION

Adapted from: *The Advocate*, Winter 2002, Utah Protection and Advocacy Agency

The bad news is that the Supreme Court continues its assault on disability rights in the name of curbing federal control over states. The good news is that there remain ways of getting around the recent unfavorable decisions. The worst news is that there is an organized push to extend these decisions to allow few if any disability rights to even exist.

This past summer the Court handed down two decisions of great concern to disability rights advocates: *Board of Trustees v. Garrett* (*Garrett*) and *Alexander v. Sandoval* (*Sandoval*). In *Garrett*, the court declared that a state employee may not sue a state employer for discrimination based upon disability in violation of Title I of the Americans with Disabilities Act (ADA). Underlying the *Garrett* decision is the 11<sup>th</sup> Amendment to the U.S. Constitution. The amendment protects states from being sued in federal court unless, for example, Congress expressly removes that protection in a law validly enacted pursuant to the 14<sup>th</sup> Amendment.

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**The Court concluded Title I of the ADA obligates the states to do things for people with disabilities that the Constitution doesn't require.**

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Congress did indeed enact the ADA pursuant to the authority granted it by the 14<sup>th</sup> Amendment to pass laws promoting equal protection and due process. In the ADA, Congress also expressly removed the states' 11<sup>th</sup> amendment protection from being sued in federal court. Thus, in *Garrett* the state defendant argued that the employment discrimination provisions of Title I of the ADA were not validly enacted pursuant to Congress' 14<sup>th</sup> Amendment authority and, therefore, neither was the ADA's removal of the state's 11<sup>th</sup> Amendment protection from being sued in federal court.

Congress' 14<sup>th</sup> Amendment authority to protect a right goes only as far as that right is otherwise guaranteed by the Constitution. With regard to disability rights,

the Court decided that the Constitution protects only against discrimination that does have some plausible explanation. In other words, if a state has a plausible excuse for not hiring a person with a disability, such as a claim that altering that person's work environment to accommodate a disability would cost the state a little bit of extra money, the Constitution, according to the Court,

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**Advocates are also concerned that the *Garrett* opinion creates precedent upon which more ADA rights may be taken away.**

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would not require the state to hire that person. The ADA, by contrast, might require the state to affirmatively accommodate that person by altering workspace, changing duties, or making other reasonable accommodations. The Court concluded Title I of the ADA obligates the states to do things for people with disabilities that the Constitution doesn't require. Also, the Court concluded there was not a sufficient history of employment discrimination committed by states to justify Title I obligating the states to protect rights beyond what the Constitution would otherwise require.

Without a doubt, that was a very controversial decision. It was decided by the same sharply divided 5-4 court margin that has decided several recent cases, including those involving the 2000 presidential election. Advocates believe the court glossed over the long history of disability discrimination documented by Congress when it passed the ADA – a history the 4-judge minority detailed in its dissenting opinion. Advocates are also concerned that the *Garrett* opinion creates precedent upon which more ADA rights may be taken away.

The U.S. Court of Appeals for the Tenth Circuit, which includes Utah and five other states, recently extended the Supreme Court's reasoning in *Garrett* to conclude that you may no longer sue a state under Title II. Title II of the ADA prohibits state and local governmental programs and facilities from discriminating based

# ERODE DISABILITY RIGHTS



upon disability. Now, at least in the Tenth Circuit's six states, Title II prohibits discrimination committed only by non-state governmental entities.

But all has not been lost! **These opinions apply only to ADA lawsuits against state entities.** Cities and counties are still bound to comply with ADA. Telling the difference may become more complicated, however, when one deals with special districts created to provide services related to education, transportation, waste disposal, etc.

In addition, if the state agency in question receives any federal money at all, that agency must comply with the Rehabilitation Act of 1973, Section 504. Section 504 provides much the same protection as the ADA against employment discrimination and unequal access to governmental programs and facilities. Most state agencies, for example those dealing with education, health, human services, corrections and highways, do receive federal money.

Even though Section 504 offers some protections, the Supreme Court issued the *Sandoval* opinion a couple of months after *Garrett*. That opinion, by the same sharply divided 5-4 margin as in *Garrett*, potentially guts Section 504.

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... disability discrimination occurs far more often because of myth, fear and stereotype than it does from a malicious or evil heart.

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On its face, the *Sandoval* opinion deals only with Title VI of the 1964 Civil Rights Act, which forbids discrimination based upon race and nationality by state agencies that receive federal funds. The Court held that Title VI creates a right to sue an entity that receives federal funds only if it intentionally discriminates against an individual. Title VI, according to the Court, does not create a right to sue if a neutral appearing policy or practice just happens to discriminate based upon race or nationality. Therefore, in *Sandoval*, a state could not be

sued for giving driver license tests only in English even though persons who speak little or no English will almost certainly never pass the test.

What, you ask, does *Sandoval* have to do with Section 504? Guilt by association. The first part of Section 504 is worded identically to Title VI except that, instead of forbidding discrimination based upon "race and nationality," Section 504 says "disability." You may argue that if Title VI applies only to intentional discrimination, then Section 504 applies only to intentional discrimination. If that is correct, Section 504 would no longer require recipients of federal money to build curb ramps, accommodate test-takers with a reader or extra time, provide important materials in formats that people who are deaf or blind can understand, buy buses that accommodate people who use wheelchairs, provide paratransit transportation services, and on and on and on. In sum, it would remove one of the most important tools available to fight discriminatory policies and practices.

But, as with *Garrett*, all is not lost...at least not yet. Despite the similarity in wording between Title VI and Section 504, Congress noted that Section 504 was needed not because people with disabilities are necessarily singled out for individual discrimination, but because otherwise neutral policies and practices tend to exclude people with disabilities from enjoying equal access to programs and facilities. The Congressional history surrounding its enactment of Section 504, and even courts within the Tenth Circuit that have examined the issue, note that **disability discrimination occurs far more often because of myth, fear and stereotype than it does from a malicious or evil heart.** And especially with regard to physical access to programs and facilities, Section 504 makes clear that all but the smallest federal fund recipients must make "significant structural alterations" to provide access for persons with disabilities.

**ADAP continues to track the impact of ADA rulings in this Supreme Court session. For more information about the *Garrett* and other ADA cases, you may contact ADAP at Box 870395, Tuscaloosa, AL 35487-0395 or call 1-800-826-1675.**



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# State Advocacy Organizations Select New Leaders

Mental Health Consumers of Alabama (MHCA) has been reorganizing and revitalizing its state organization in the past year. As part of that process, MHCA hired a new director.

**Rebecca C. Poole** is the new Executive Director for MHCA, beginning her new duties January 2, 2002. Ms. Poole's work experience is in both the public and private sectors and, most recently, she was employed with a national corporation as Director of Operations for the South Region. This position involved management, financial analysis, and coordination of the operations of more than 30 outpatient rehabilitation facilities and hospital contracts. Ms. Poole's education includes a B.S. in Business Administration from Auburn University at Montgomery and an M.S. in Management from Faulkner University. She has also taken courses in pursuit of a law degree.

More important than formal education and work experience, Ms. Poole brings to the position first hand knowledge of mental illness and an awareness of how crucial advocacy, education, and peer support is to recovery and stability for those who live with mental illness. She has been a consumer of mental health services for 18 years. According to Poole, it has been through the support of others, as well as a thorough understanding of her illness, that a balance is being achieved in her life. Such a balancing continues in all consumers' lives, each and every day, she said.

MHCA is committed to helping in every way possible to be a positive influence in the lives of mental health consumers, whether it is in the form of increased or improved programs, legislation, advocacy, or peer support. MHCA announces it has been through a rebirth over the past several months, and welcomes Rebecca in her new role. You may contact Ms. Poole at MHCA by calling 1-800-264-6422 or (334) 834-3055 in Montgomery.

**Thomas B. Holmes** of Montgomery became the new Executive Director for The Arc of Alabama on July 2, 2001. Mr. Holmes retired from the State of Alabama after 21 ½ years with the Department of Economic and Community Affairs (ADECA).

Mr. Holmes is a native of Mobile and the father of a 24-year-old son with mental retardation and other disabilities. He received a B.A. in political science from Mobile College (now the University of Mobile) and a Master of Public Administration from Jacksonville State University.

While at ADECA, Mr. Holmes served as Chief of Science and Technology, Chief of Technology and Energy Development, and Chief of Policy and Planning in the Science, Technology and Energy Division. Mr. Holmes also served as interim director of the Governor's Office on National and Community Service and executive assistant and administrative assistant to Governor Fob James. Mr. Holmes was appointed by Governor James to the Alabama Council for Developmental Disabilities and the Alabama Higher Education Loan Corporation. You may contact Mr. Holmes at the Arc of Alabama at 334/262-7688.

## NOTICE

If you need a BOX of the book, *Special Education in Alabama, A Right, Not a Favor* published by ADAP, The Birmingham Independent Living Center has agreed to be a pick-up point. If you live, or your agency is located close to Birmingham, you can get your books faster, plus ADAP saves \$\$\$ on postage and handling. Call 205/251-2223 to place an order and to set up a pickup time.

Working together benefits everyone!

Thanks.

# Things are 'a changin' at ADAP

## THE WELCOME MAT IS OUT FOR THREE NEW EMPLOYEES ELLEN GILLESPIE, LAURA JONES, AND CHRISTINA NORRIS

Dr. Ellen Gillespie, ADAP's new Associate Director, brings a lot of practical experience and a world of wisdom to the agency. She has worked in developing and managing support services for people with disabilities for almost 30 years. Ellen's interest in advocacy, and especially self-advocacy, began with her dissertation at the University of North Carolina at Chapel Hill. The dissertation was a study of students' participation in their own IEP meetings. She is particularly interested in advocating for services based on person-centered planning, a process emphasizing the capacities and gifts of each individual. She describes her management style as "positive and participative" with the focus on working together as a team toward achieving the ADAP mission.



Ellen has been married to Dr. Mike Goodman, a school psychologist, for over 26 years. They have one daughter, Lauren Gillespie Goodman, a sophomore at the University of North Alabama in Florence. In her spare time Ellen enjoys serving as an elder in her church, reading, photography, needlework, and tap dancing!



Christina Norris is a 2000 graduate from The University of Alabama School of Social Work and received her license certification in November of the same year. Christina provided Care Coordination for Alabama Health Network medicaid maternity program. She worked in Tuscaloosa, Hale and Greene counties serving approximately 200 clients.

Christina is a native Tuscaloosan and has been married for three years.

Laura Jones will work with the Wyatt Settlement Workgroup. ADAP and the Department of MH/MR are working cooperatively to address issues of concern in the treatment of persons with mental illness and mental retardation.



Before joining ADAP's staff, Laura worked with Community Service Programs/Early Intervention for 2 ½ years. She worked with children birth to 3 years old with developmental disabilities. She graduated from The University of Alabama in 1997 with a bachelor's degree in Human Development and Family Studies. Laura is a native of Hamilton, Alabama.

### PADS EXCELLENCE IN INCLUSIVE EDUCATION CONFERENCE

APRIL 22-23, 2002

PELHAM CIVIC COMPLEX

The conference will focus on how to successfully include children ages 3-21 with special needs in the general education classroom. This is an opportunity for parents and educators of special needs children to make an impact on Alabama's educational system. For more information, please contact Jayna Welch at 205/988-4141 or e-mail at [jaynatwelc@aol.com](mailto:jaynatwelc@aol.com)

**Department of Mental Health and Mental  
Retardation—Legislative Report  
March 11, 2002**

Mental health insurance parity is again before the Alabama Legislature. The legislature began its 2002 Regular Session on January 8<sup>th</sup>. The Session is scheduled to end on April 22<sup>nd</sup>. The DMH/MR, in conjunction with the Alabama Coalition for Mental Health Parity, has again submitted legislation that would ensure that Blue Cross/Blue Shield (BC/BS) and HMO's are governed by the Mental Health Insurance Parity Act that passed in the 2000 Regular Session. Because BC/BS and HMO's are incorporated under separate statute from other insurance companies, the coalition felt that by amending these statutes, it would leave no question as to the intent of the legislature that BC/BS and HMO's were expected to comply with the 2000 Parity Act.

The 2000 Parity Act requires that all group health benefit plans offer employers the option of purchasing mental health insurance coverage equal to that of physical health insurance coverage. The Parity Bill (S.293) is now pending FINAL PASSAGE in the House of Representatives. Senator Jack Biddle and Representative Marcel Black have made special efforts to hand-walk this bill through the process. Both can be written at the following address:

Alabama Legislature  
Alabama State House  
11 South Union Street  
Montgomery, AL 36130  
Biddle: 334/242-7846  
Black: 334/242-7667

ADAP is a member of the Alabama Coalition for Mental Health Parity.

**SURFING**

Looking for disability information on the Internet? The Internet has thousands of web sites, discussion groups and other resources dealing with disabilities. Surfing, which is linking from one web site to another, is a great way to find good sites. Remember, anybody can write anything on the Internet. If a site contains legal or medical information check the information with your own doctor or lawyer.

Some good sites to start with are:

<a href="http://www.birminghamilc.org">www.birminghamilc.org</a>	Independ. Living Center
<a href="http://www.adap.net">www.adap.net</a>	ADAP
<a href="http://best.ssa.org">http://best.ssa.org</a>	Social Security Admin.
<a href="http://janweb.icdi.wvu.edu">http://janweb.icdi.wvu.edu</a>	Job Accom. Network
<a href="http://www.wheelchairjunkie.com">www.wheelchairjunkie.com</a>	Wheelchair info.
<a href="http://www.sedbtac.org">www.sedbtac.org</a>	SE-DBTAC (ADA info)
<a href="http://www.disability.gov">www.disability.gov</a>	Government resources
<a href="http://www.adapt.org">www.adapt.org</a>	ADAPT (advocacy)
<a href="http://www.hud.gov/groups/disabilities">www.hud.gov/groups/disabilities</a>	HUD Housing
<a href="http://www.tash.org">www.tash.org</a>	TASH (Advocacy)
<a href="http://www.ncil.org">www.ncil.org</a>	NCIL (Indep. Living)
<a href="http://www.house.gov">www.house.gov</a>	Congress
<a href="http://www.senate.gov">www.senate.gov</a>	Congress
<a href="http://www.whitehouse.gov">www.whitehouse.gov</a>	The White House
<a href="http://www.biausa.org">http://www.biausa.org</a>	Head Injury
<a href="http://www.wacb.org">http://www.wacb.org</a>	Blindness
<a href="http://www.state.al.us">www.state.al.us</a>	Alabama government resources and links

Adapted from: *Independent Living News*, September 2001.

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The University of Alabama  
Alabama Disabilities Advocacy Program  
School of Law Clinical Programs  
Box 870395  
Tuscaloosa, AL 35487-0395

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## The Arc OF ALABAMA

# Alabama Respite Care Services Program

The Arc of Alabama, through a grant from the Alabama Department of Mental Health and Mental Retardation (DMHMR), is providing the Alabama Respite Care Services Program to pay for the costs of respite care services for eligible individuals with mental retardation and related developmental disabilities in Alabama.

For this program, respite care is defined as the temporary relief of care duties for the primary caregiver (parent, grandparent, foster parent or guardian) for an eligible individual with mental retardation and related developmental disabilities.

Families choose a person (service provider) to come to their home and provide respite care services. Families of individuals with mental retardation and related developmental disabilities who live in Alabama are eligible. Families may receive a maximum of \$10 per hour for ten (10) hours of respite care services up to the maximum of \$100 per eligible individual. Applications may be submitted by the parent, guardian, or other caregiver for any individual with mental retardation and related developmental disabilities.

Applications may be requested by calling The Arc of Alabama at (334) 262-7688 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Applications may be submitted to The Arc of Alabama, 300 South Hull Street, Montgomery, Alabama 36104-6105, beginning April 1, 2002, and will be accepted through June 1, 2002.

Applications will be reviewed by The Arc of Alabama and those approved for services will be notified in writing.

For further information, please contact Tom Holmes, Executive Director, The Arc of Alabama.

### RESPIRE CARE SERVICES FUNDS MUST BE USED BY JULY 31, 2002.

#### CONTENTS

<i>Special Needs Calculator Goes Online</i> .....	2
<i>Alabama Council for Developmental Disabilities Launches Focus Groups</i> .	3
<i>ADAP Helps Client Get Environmental Control Unit</i> .....	4
<i>Kids on the Block</i> .....	5
<i>Good News</i> .....	6
<i>Some of This and Some of That</i> .....	6
<i>Goals and Priorities Questionnaire</i> .....	7

### "LET YOUR VOICE BE HEARD"

by Judy Roy, Independent Living Center

Disability issues will be the topic at the Alabama Disability Action Coalition Town Hall Meeting at the new Lakeshore Foundation Fitness Center on August 8, 2002, beginning at 9 a.m. and ending at 12 noon.

Topics on and about disability have not always been the subject of discussion by candidates running for office. You, as a person with a disability or if you have a family member or friend with a disability, should know the candidates' positions on issues before casting your vote.

Invitations are extended to the candidates running for Governor, U.S. Senate and Alabama Secretary of State. Each candidate will be given information on four broad areas of interest to people with disabilities: safe, accessible and affordable housing; accessible transportation; employment; and education.

Candidates will be allowed time to present their platforms and then the discussion will be open to questions from the floor. Please make your plans to attend. This is your opportunity to "Let Your Voice be Heard!"

## SPECIAL NEEDS CALCULATOR GOES ONLINE



**Merrill Lynch**

*Unique Tool Provides Easier Access to Financial Planning for Families of Children With Disabilities*

Merrill Lynch (NYSE: MER) is making financial planning for families with special needs children easier and more convenient by putting its unique Special Needs Calculator, which was once only available through one's Financial Advisor, online.

The Calculator, now accessible at <http://askmerrill.ml.com/specialneeds>, lets families know what future costs will be for the special needs child, and how much they have to save and/or invest to ensure quality of life for the special needs child. It also

provides answers to questions about retirement, college savings for all children, and estate planning.

"Parents of children with special needs have pressures far beyond those of typical kids," said Paul A. Potito, Executive Director of the Center for Outreach and Services for the Autism Community, based in Ewing, NJ. "The easy accessibility of this tool will allow parents to visit this site, plan and discuss financial needs at their convenience."

"Previously, financial planning and serving these families was more of a guessing game, even among professionals," said Christopher D. Sullivan III, Vice-President, Merrill Lynch Special Needs Financial Services Group. "[T]his powerful tool gives families peace of mind by helping them plan financially for the needs of their child."

Merrill Lynch has long been a leader in reaching out to the special needs community. In 1990, the firm introduced its Deaf/Hard of Hearing Investor Services, which has guided thousands of Financial Advisors in serving deaf or hard of hearing clients.

The Families of Children with Disabilities Program

(FCWD) addresses the financial planning needs of 15 million families who have children/loved ones with severe disabilities. This segment of the population requires unique approaches to financial planning, trust planning and the distribution of assets.

For more information about Merrill Lynch's Special Needs Program, please call (800) MERRILL and one of our representatives will be happy to assist you.

Merrill Lynch is one of the world's leading financial management and advisory companies operating in more than 40 countries and with total client assets of approximately \$1.5 trillion. As an investment bank, it is a leading global underwriter of debt and equity securities and a strategic advisor to corporations, governments, institutions and individuals worldwide. Through Merrill Lynch Investment Managers, the company is one of the world's largest managers of financial assets. For more information on Merrill Lynch, please visit [www.ml.com](http://www.ml.com).

*News release from Merrill Lynch & Co., Inc., Meredith Groban, Media Relations 609/282-1533.*

Alabama Disabilities Advocacy Program (ADAP) is the federally mandated, statewide "Protection and Advocacy" system serving eligible individuals with disabilities in Alabama.

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Box 870395  
Tuscaloosa, AL 35487-0395  
205-348-4928 - V/TTY  
205-348-3909 - FAX  
800-826-1675 - V/TTY  
e-mail: [ADAP@law.ua.edu](mailto:ADAP@law.ua.edu)  
website: <http://www.adap.net>

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# ALABAMA COUNCIL FOR DEVELOPMENTAL DISABILITIES LAUNCHES FOCUS GROUPS

by Sheryl Matney, Executive Director  
Alabama Council for Developmental Disabilities

Individuals with developmental disabilities are being recruited to participate in a series of focus groups during June, July and August 2002.

Throughout the history of the Alabama Council for Developmental Disabilities, a full array of strategies to support individuals with developmental disabilities in advocacy efforts has been used. The Council has directly supported individuals through the development of leadership skills, networking, housing, consumer involvement, etc., as well as in collective advocacy efforts.

With the reauthorization of the Developmental Disabilities Assistance and Bill of Rights Act (the DD Act, PL 106-402), the U.S. Congress took steps to ensure that all state Councils focus efforts on "self-advocacy." The 2000 DD Act emphasizes the importance of individuals with developmental disabilities themselves having their own say, their own control and their own choice in the quality of the lives they lead. The Alabama Council has and will continue to fully endorse this goal.

The DD Act is very clear about what Councils are to do concerning self-advocacy. Councils are mandated to build capacities, change systems and advocate for both. In the arena of "self-advocacy," Councils are to set goals to:

- a. Establish or strengthen a program for the direct funding of a state self-advocacy organization led by individuals with developmental disabilities.
- b. Support opportunities for individuals with developmental disabilities who are considered leaders to provide leadership training to other individuals with developmental disabilities who may become leaders; and

- c. Support and expand the participation of individuals with developmental disabilities in cross-disability and culturally diverse leadership coalitions.

The Alabama Council will further its past work and enhance current work to encourage the establishment of supports for self-advocates in their organizations, coalitions and other initiatives.

The Council announces a short term project designed to gather information and to make recommendations to further other self-advocacy goals and objectives.

Focus groups will be made up of individuals with developmental disabilities and will prepare a report on the state of self-advocacy in Alabama, addressing, at a minimum:

- a. Who are identified self-advocates (across disabilities)?
- b. How comprehensive and inclusive is the self-advocacy movement (geographically and by disability interest)?
- c. How are future self-advocates identified and assisted in their leadership development?
- d. How effective are leadership development efforts for self-advocates?
- e. Who supports self-advocacy, in what ways and with what effect?

Focus groups will be asked to identify barriers to effective self-advocacy, including gaps in supports and other assistance.

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*Continued on page 4*

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## ADAP HELPS CLIENT GET ENVIRONMENTAL CONTROL UNIT

by Paul J. Dezenberg, Staff Attorney

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Two and a half years ago, Tom M. was boating on the Tombigbee River. He had pulled onto shore and gotten out of the boat when he noticed that his boat was drifting off in the current. Tom was in a place he had been many times before. Tom knew he had to retrieve his boat before it drifted into the stronger current of the main channel. He waded into the water, up to his waist, and then he dove head-first into the water to swim after his boat.

Although Tom often swam in that part of the river, something was different on that particular day. A large tree drifted downstream and was submerged just beneath the surface where Tom was diving. Tom's head hit the tree, breaking his neck. It was an event which would forever change the way Tom interacted with his world.

Tom's cousin pulled Tom back to shore. They managed to get a helicopter to airlift him to a hospital. That quick thinking probably saved Tom's life. But the neck injury caused Tom to become quadriplegic. He is using a wheelchair and receives around the clock care.

Tom's treating physician determined that an Environmental Control Unit ("ECU") was medically necessary for his condition. An ECU would permit Tom to regulate his body temperature, stabilize his blood pressure, and protect the integrity of his skin surfaces. Those tasks are done primarily by independently allowing him to perform weight shifts and by giving him control of the thermostat. An ECU also allowed him to use the telephone, open the door, and perform other vital household tasks.

When Tom submitted a claim to his former employer for the ECU, through its self-funded insurance policy, the claim was denied. The insurer said the ECU was not "medically necessary" as defined in the insurance policy. With ADAP's assistance, Tom appealed that decision through the employer's internal procedure. At each level, however, the employer continued to deny coverage.

Almost two years to the day of his injury, ADAP filed a lawsuit on Tom's behalf against the employer. After negotiation, the parties agreed to settle the lawsuit, with the employer paying to Tom approximately ninety percent of the cost of the ECU. Tom purchased an ECU on his own. Now Tom is enjoying the increased level of independence the ECU gives him each day.

*Continued from page 3*

Focus groups will be asked to make suggestions to improve the state of self-advocacy in Alabama in terms of the Council's federal mandate.

A tentative schedule for focus groups is:

June 10 <sup>th</sup> (evening) and June 11 (morning)	Mobile, Alabama
July 11 <sup>th</sup> 9:30 - 2:30	Birmingham, Alabama
August 8 <sup>th</sup> 9:30 - 2:30	Tuscaloosa, Alabama
TBA	Dothan, Alabama

The facilitator for the focus groups will be Ann Marshall of the Alabama Disabilities Advocacy Program. For interest forms, please contact Joyce Carvana or Myra Jones at the Alabama Council for Developmental Disabilities office at 1-800-232-2158 (toll free) or 334-353-7055 (TTY).

# KIDS ON THE BLOCK

by Karen Cochrane, Children's Health System

Have you ever seen two kids exactly alike? Two that look alike as well as act alike and can do exactly the same thing the same way? No? . . . Well, you probably never will! All kids are different and that's what makes them special.

This special uniqueness in each child is the theme of an entertaining, yet educational, puppet program called Kids on the Block. These puppets are designed to represent all kinds of children, some with disabilities, some without, doing the things that kids do everyday. The puppets are about three feet high and come with appropriate props that make them very realistic.

Each puppet has a story to tell about being a child. The stories are based on authentic events and are told on a child's level. The stories are actually scripts that have been developed from questions children have asked about topics such as child abuse, drugs, asthma, cancer, and car and bike safety.

The puppet shows are usually thirty minutes in length and designed for children in kindergarten through 5<sup>th</sup> grade. The script for each puppet has been used in classrooms all over the country and has been thoroughly tested. Puppeteers use cassette tapes and the written script to memorize each puppet's character and the story he or she tells. This ensures that the educational information is the same for each puppet show.

Puppeteers for Kids on the Block are all volunteers. They are trained in Bunraku, a Japanese form of puppetry in which the puppeteer dresses in black and stands behind the puppet, thus forming a silhouette. The audience soon becomes unaware of the puppeteer's presence. The programs have become so popular, especially in the elementary schools, that it has become difficult to fulfill the many requests for shows.

The Children's Hospital in Birmingham, AL and the Mental Health Association in Tuscaloosa County have been using Kids on the Block for community education for several years. If you are interested in working as a Kids on the Block volunteer or would like more information about a Kids on the Block show, please call or write:

Karen Cochrane  
Children's Health System  
CHECK Center  
1600 7th Ave. South  
Birmingham, AL 35233  
205/ 939-5972

Project Coordinator  
Mental Health Assoc. in Tuscaloosa County  
2123 - 9th Street, Suite 108  
P.O. Box 1731  
Tuscaloosa, AL 35401  
205/759-2276

by Jane Davis, Director of Legislative and Constituent Affairs  
Alabama Department of Mental Health and Mental Retardation

The Mental Health Parity legislation passed on the final day of the session. Blue Cross/Blue Shield and Health Management Organizations are now required BY LAW to adhere to the provisions of the original parity act passed in 2000. Many people have put in long days and a lot of hard work to make this day a reality. Governor Don Siegelman signed the Mental Health Parity Legislation into law on April 26, 2002, and it has been assigned Act Number 02-511. The Governor's office has agreed to designate a photo/signing day. An announcement will be made as soon as the date has been determined, so the Parity Coalition can be present.

Appreciation is extended to Senator Jack Biddle and Representative Marcel Black, sponsors of the bill, who were responsible for steering the bill through the entire process. Also, Representatives James Buskey, Neal Morrison and Jack Venable got the bill placed on the House Consent Calendar and moved the bill to its successful conclusion.

The following website offers information regarding President Bush's commitment to address mental health parity in the next session of Congress. <http://www.whitehouse.gov/news/releases/2002/04/20020429.html>.

## *Some of This and Some of That*

**New Publication:** *Removing Barriers to Health Clubs and Fitness Facilities, A Guide to Accommodating All Members, Including People with Disabilities and Older Adults* is available online from the North Carolina Office on Disability and Health at <http://www.fpg.unc.edu/~ncodh/FitnessGuide.pdf>. The Guide covers equipment selection, information on assisting individuals with differing disabilities and resources. To get a text version without html, send URL of the Adobe Acrobat pdf file in the body of the message to [pdf2txt@adobe.com](mailto:pdf2txt@adobe.com) <<mailto:pdf2txt@adobe.com>>

**The Alliance for Technology Access (ATA)** is a network of community-based Resource Centers, Developers and Vendors, Affiliates, and Associates dedicated to providing information and support services to children and adults with disabilities, and increasing their use of standard, assistive, and information technologies. ATA members can be found all across the country. The website <http://www.ataaccess.org> provides information about ATA, their resources, how to contact members and help achieve their mission of "connecting children and adults with disabilities to technology tools."

**OOPS!** It is our pleasure to correct the Social Security Administration's website as listed in the last issue of *Airmail*, Vol. 7, Issue 1. The correct site is [www.ssa.gov](http://www.ssa.gov).

**HUD Funding.** On March 26, 2002 HUD, announced the availability of funding to expand affordable housing opportunities for people with disabilities. The HUD Super Notice of Funding Availability (SuperNOFA) includes funding for numerous federal housing programs. The application process; a listing of eligible applicants and activities; and the amount of funding available vary by program. For a complete listing of programs included in the SuperNOFA, go to <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>, or call the HUD SuperNOFA Information Center at 1-800-HUD-8929. Additional information on HUD programs and how to apply for them is available on the TAC Housing Center website at <http://www.tacinc.org/>.

**Center for Mental Health Services (CMHS).** For the latest news and information on CMHS and federal consumer-related programs and activities, grant announcements and funding opportunities, policy statements, reports and press releases, requests for public comment, and news on upcoming meetings and conferences, subscribe to the CMHS Consumer Affairs E-news by visiting the Consumer/Survivor page of the Center for Mental Health Services website at <http://www.mentalhealth.org/consumersurvivor/>.

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## GOALS & PRIORITIES QUESTIONNAIRE

ADAP's mission is to provide quality, legally-based advocacy services to persons with disabilities through protecting, promoting, and expanding their rights. We work with individuals with disabilities as well as their advocates to promote independence, productivity, community integration, and better quality of life for people with disabilities in Alabama. Please help us to better accomplish our mission by completing this survey and returning it to us. ***Please return by July 1, 2002.*** Thank you for your participation.

**Please rank 10 of the following issues in order of importance, with number 1 being the most important.**

- be free of abuse and neglect in institutions
- be free from abuse and neglect in the community
- receive an appropriate education and/or special education services
- use transportation and public services the same as people without disabilities
- get appropriate medical treatment in an integrated setting
- get appropriate mental health treatment in an integrated setting
- obtain a job and have responsibilities and the possibility of advancement
- freedom of choice in my living arrangements
- right to have and maintain relationships
- acquire and use communication devices and assistive technology
- place my child in a child care facility with children without disabilities
- be treated fairly by the courts
- get health and life insurance
- have the choice to refuse treatments and medications I do not want
- receive SSI or Social Security benefits
- receive Medicaid benefits
- be among and included with people without disabilities in the community, at school, and/or at work
- have personal attendant care
- have decent, affordable housing
- have rights in the work place
- access to advocacy regarding Social Security benefits
- return to work Ticket issues
- Other: \_\_\_\_\_

---

**Please make suggestions about our services offered here at ADAP.**

1. What training and education activities would you like to see ADAP undertake?
2. What legislative issues do you think are most important?
3. Do you have any general ideas of improvements that ADAP could make in their services?
4. What casework suggestions do you have for attorneys and advocates?
5. Please list all other comments here. Attach further comments, if necessary.

**Complete the following sentences (check all that apply)**

**I am a/an...**

- person with a developmental disability
- person with a mental illness
- person with other disability
- parent/family member of a person with a disability
- teacher/school personnel
- professional or service provider
- attorney
- advocate
- other (list): \_\_\_\_\_

**Mail to:** Alabama Disabilities Advocacy Program  
Box 870395  
Tuscaloosa, Alabama 35487-0395  
See reverse for mailing instructions.

**or:** FAX to: 205/348-3909

**or:** complete the survey on our website:  
[www.ADAP.net](http://www.ADAP.net)



NO POSTAGE  
NECESSARY  
IF MAILED  
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UNITED STATES

**BUSINESS REPLY MAIL**  
FIRST-CLASS MAIL PERMIT NO. 14 TUSCALOOSA AL  
POSTAGE WILL BE PAID BY ADDRESSEE



THE UNIVERSITY OF ALABAMA  
ALABAMA DISABILITIES ADVOCACY PROGRAM  
BOX 870395  
TUSCALOOSA AL 35486-9983



Fold on this line -----

**ADAP Wants Your Opinion on Our Goals & Priorities**

**Directions:**

1. Complete the survey on the other side of this page.
2. Fold on above dotted line.
3. Seal with tape for privacy.
4. Return this pre-paid self-addressed form to ADAP.

*Airmail* is funded 100% with federal funds through: • Administration on Developmental Disabilities (PADD) • Center for Mental Health Services (PAIMI) • Social Security Administration (PABSS) • U.S. Department of Education/Rehabilitation Services (PAIR and PAAT)

The University of Alabama  
Alabama Disabilities Advocacy Program  
School of Law Clinical Programs  
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Tuscaloosa, AL 35487-0395

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## President Launches New Freedom Commission on Mental Health

“Our country must make a commitment: Americans with mental illness deserve our understanding and they deserve excellent care,” said President George W. Bush in announcing the establishment this spring of the President’s New Freedom Commission on Mental Health.

The Commission will identify the needs of people with mental illness and the barriers to care, investigate community-based care models that have shown success in coordinating and providing mental health services, and formulate policy options to integrate effective treatments and improve service coordination. The Commission is charged with producing an interim report within 6 months of the President’s April 29 Executive Order, followed by a final report at a later date to be determined by the Commission Chair in consultation with the President.

Currently, numerous Federal, state, and local government entities

oversee mental health programs, policy, funding, and the diverse network of public and private providers. The Bush Administration wants to encourage more efficient organization and coordination to ensure effective treatment for those in need.

SAMHSA Administrator Charles G. Curie, M.A., A.C.S.W. said, “We welcome the opportunity the Commission offers to take a fresh look at ways to enable adults with serious mental illness and children with serious emotional disturbances to live, work, learn, and participate fully in their communities. As the Federal Government’s lead Agency for administering mental health and substance abuse services, SAMHSA will clearly have a role in carrying out the Commission’s recommendations.”

The Commission comprises a maximum of 15 members appointed by the President, including providers, payers, administrators, and consumers of mental health services and their families. The Commission also includes a maximum of seven ex-officio members, four of whom will be designated by the Secretary of Health and Human Services and the remaining three of whom will be designated one each by the Secretaries of the De-

partment of Labor, Education, and Veterans Affairs.

President Bush has appointed Michael E. Hogan, Ph.D., as Commission Chair. Dr. Hogan will also continue in his position as Director of the Ohio Department of Mental Health, where he has served since 1991. In this capacity, he implemented comprehensive legislative reform which devolved mental health care to the community level, reforming forensic services to improve quality and public safety, and developing new approaches to children’s services to reduce reliance on out-of-home care.

In announcing the formation of the Commission, President Bush said, “Millions of Americans are impaired at work, at school, or at home by episodes of mental illness. Remarkable treatments exist, and that’s good. Yet many people—too many people—remain untreated.”

He identified three major obstacles that interfere with care: the stigma surrounding mental illness “caused by a history of misunderstanding, fear, and embarrassment; a fragmented mental health service delivery; and unfair treatment limitations placed on mental health insurance coverage.”

### CONTENTS

Project Drive .....	2
Web Site Chronicles Disability History in U.S.....	3
President’s New Freedom Commission on Mental Health.....	3
Alabama Supreme Court Dismisses Equity Funding Lawsuit .....	4
Department of Justice .....	6
10 Year Medical Assistance Perspective .....	7
Why Should You Create a Newsletter? .....	8

Continued on page 5

**Project Drive**, directed by Dr. Robin Lanzi and Dr. Wanda Washington, represents a landmark effort both in the state of Alabama and the nation, as one of the first ever programs to help individuals with cognitive disabilities obtain their learner's license. This was accomplished by the development of two major resource materials: a modified driver's license manual and an accompanying teacher's curriculum guide.

ADAP's Coordinator of Outreach and Training, Ann Marshall, participated in the development of the original program grant for Project Drive. She also assisted with the survey and distribution to the disability community, as well as review of the final manual. The modified manual and teacher's curriculum guide are now available on the Civitan International Research Center's website at

## Project Drive Materials Now Available on the Internet



<http://www.circ.uab.edu/Pdrive/>  
Project Drive was initially funded by the Joseph P. Kennedy, Jr. Foundation and UAB's Civitan International Research Center. Posting of the modified manual and teacher's curriculum guide on the Civitan Center's website was made possible by a generous grant from Dr. Wayne Echols and the UAB Office of Special Affairs.

The state's driver's license manual was modified to approximately the third grade reading level, using large print and bold/colorful pictures. The Alabama Department of Public Safety certified that the modified manual is equivalent to the state's manual. The Teacher's Curriculum Guide consists of about 500 pages of classroom materials useful in teaching individuals with low reading comprehension levels safe driving concepts and the information necessary to pass the Alabama Driver's Permit test.

The Teacher's Curriculum Guide contains vocabulary lists, flash cards, work sheets, puzzles, classroom exercises, chapter tests, answer keys, mixed reviews, and teaching tips. The materials were pilot tested in 16 schools throughout the state. Of the 157 students that participated in the demonstra-

tion project, 103 students (66%) had the opportunity to take the test at the end of the project. Of the ones that took the test, 78% of them passed the test.

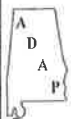
The Alabama Department of Education, Special Education Services, provided funding to reproduce and distribute both of Project Drive's books – namely, the Modified Driver's Manual and the Teacher's Curriculum Guide, for all special education teachers in the state. Further, the Alabama Department of Education, Driver's Education, collaborated with the Alabama Department of Education, Special Education Services, in the publication of the modified manual, to distribute it to driver's education teachers statewide. Adult literacy efforts ranging from industrial employee education to welfare-to-work programs are now using Project Drive books to foster independence and productivity in their clients. Calls are received weekly from individuals, agencies, and schools to purchase the materials. If you are interested in learning more about Project Drive materials, please contact Dr. Robin Lanzi at (205) 934-3171 or visit the website <http://www.circ.uab.edu/Pdrive/>.

Alabama Disabilities Advocacy Program (ADAP) is the federally mandated, statewide "Protection and Advocacy" system serving eligible individuals with disabilities in Alabama.

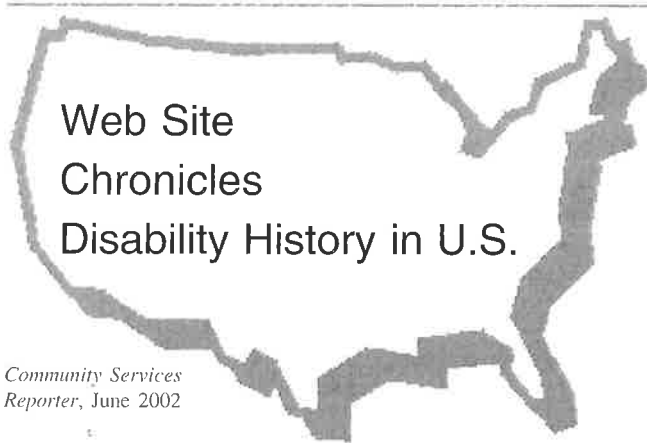
**Director - Reuben W. Cook**  
**Associate Director - Ellen Gillespie**

*Airmail* is published by ADAP, The University of Alabama School of Law, Clinical Law Programs.

*Airmail* provides information on issues and events of interest to people concerned about the rights of persons with disabilities. Organizations and individuals are encouraged to submit articles to be considered for publication. Inquiries may be sent to Segail I. Friedman, Information Specialist, at the address below.



Box 870395  
Tuscaloosa, AL 35487-0395  
205-348-4928 - V/TTY  
205-348-3909 - FAX  
800-826-1675 - V/TTY  
e-mail: [ADAP@law.ua.edu](mailto:ADAP@law.ua.edu)  
website: <http://www.adap.net>



Community Services  
Reporter, June 2002

The Disability History Museum (DHM) is a Web-based repository designed to promote understanding about the historical experience of people with disabilities by recovering, chronicling, and interpreting their stories. It is intended to help cultivate a deeper understanding of disability and to dispel lingering myths, assumptions, and stereotypes by examining these cultural legacies.

The Web site provides its viewers with a searchable, theme-based digital collection of documents and images related to disability history in the United States. These artifacts are drawn from public and private collections around the country. They exist as primary source materials in the "Library," and then are interpreted in "Museum" exhibitions and "Education" resources. The DHM is sponsored by Straight Ahead Pictures, Inc., a nonprofit organization whose mission is to create innovative media projects and educational forums that use archival materials and oral history to foster community dialog about contemporary social issues. Visit the museum online at [www.disabilitymuseum.org](http://www.disabilitymuseum.org) or e-mail for more information at [info@disabilitymuseum.org](mailto:info@disabilitymuseum.org).

## PRESIDENT'S NEW FREEDOM COMMISSION ON MENTAL HEALTH

[www.mentalhealthcommission.gov](http://www.mentalhealthcommission.gov)

Chair's Welcome: Michael F. Hogan

Welcome to the website of the President's New Freedom Commission on Mental Health. The Commission was created by Executive Order on April 29, 2002. Its mission is to conduct a comprehensive study of the United States mental health services delivery system, including public and private sector providers, and to advise the President on methods of improving the system. To complete this task, the Commission needs guidance, especially from the mental health community: consumers of mental health services, family members, mental health professionals and providers, advocates, and other concerned citizens.

We have dedicated a section of this website to receive your ideas about mental health care. The questions posed on the website will change as our work progresses. Other opportunities for suggestions and testimony will be provided at the Commission's meetings and hearings, to be announced in the near future.

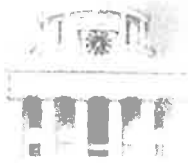
If you are looking for information on mental health and mental illness, or for information on mental health services, visit the Health & Human Services Mental Health Cornerstone web page. ([www.mentalhealth.samhsa.gov/cornerstone](http://www.mentalhealth.samhsa.gov/cornerstone))

Thank you for your interest in the work of the President's New Freedom Commission on Mental Health. I encourage you to return to this website to track our progress, and I look forward to hearing your ideas and concerns.

Source: <http://www.mentalhealthcommission.gov/welcome.html>

### SUBSCRIBE TO THE CMHS CONSUMER AFFAIRS E-NEWS

For the latest news and information on the Center for Mental Health Services (CMHS) and federal consumer-related programs and activities, grant announcements and funding opportunities, policy statements, reports and press releases, requests for public comment, and news on upcoming meetings and conferences, subscribe to the CMHS Consumer Affairs E-News by visiting the Consumer/Survivor page of the Center for Mental Health Services Web Site at: <http://www.mentalhealth.org/consumersurvivor>



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## ALABAMA SUPREME COURT DISMISSES EQUITY FUNDING LAWSUIT

by Paul J. Dezenberg, Attorney

In 1990, the Alabama Coalition for Equity (“ACE”) filed a lawsuit challenging the adequacy of educational opportunities offered to Alabama schoolchildren and the inequitable distribution of educational funding. Soon after the case was filed, ADAP intervened as a plaintiff and asserted claims on behalf of children with disabilities. This lawsuit was consolidated with a similar lawsuit filed by the American Civil Liberties Union (“ACLU”).

In addition to the claims asserted by ACE and ACLU, ADAP asserted that the State of Alabama Defendants had failed to provide children with disabilities with an appropriate education and special services under the Alabama Exceptional Children’s Act. ADAP also asserted that the method used to distribute special education funding was arbitrary and irrational and resulted in the denial of an appropriate education to children with disabilities in violation of the due process clause of the Alabama Constitution.

After a trial in Montgomery in 1993, the trial court entered an order in favor of ADAP and the other Plaintiffs. This order, called the “Liability Order,” found that the State of Alabama Defendants had failed to provide an adequate and equitable education to Alabama schoolchildren in violation of the Alabama Constitution. The trial court also found that the Defendants had failed to provide an appropriate education and special services under the Alabama Code, and that the method used to distribute special education funding was arbitrary and irrational. Based on its findings, the trial court ordered the Defendants to remedy the educational inadequacies in Alabama.

The trial court certified the Liability Order as “final,” and this order was not appealed by the Defendants. Governor Folsom and the other Defendants at the time decided instead to work with the Plaintiffs towards establishing an adequate and equitable education system in Alabama. To that end, the trial court retained jurisdiction for what was termed a “Remedy Phase.” During

the Remedy Phase, the parties would have input into the legislation and planning conducted by the Defendants towards remedying Alabama public education.

Soon thereafter, however, an election placed a different Governor, Fob James, into office. For the next several years, our tax dollars were spent towards legal challenges to the lawsuit. These challenges served to delay the proceedings, but they ultimately were unsuccessful. For example, on four separate occasions, challenges were brought as to the finality of the Liability Order. Each time, the Alabama Supreme Court concluded that the Liability Order was final and binding on the State Defendants. However, the Supreme Court also issued an order delaying the Remedy Phase of the lawsuit until the State Defendants had a “reasonable time” to independently formulate a remedy. Subsequently, an election made Judge Roy Moore Chief Justice of the Alabama Supreme Court.

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... ADAP is severely disappointed by the decision of the Alabama Supreme Court to dismiss further remedy proceedings in the Equity Funding Lawsuit, ...

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In early 2001, Governor Don Siegelman announced proration of Education Trust Fund dollars. The Alabama Association of School Boards (AASB) filed a lawsuit challenging proration as to K-12 education. AASB asserted two legal bases for their challenge – (1) the right to an education under the Alabama Constitution which had been established in the Liability Order, and (2) a claim under an Alabama statute concerning proration of teacher salaries. The Plaintiffs in the Equity Funding Lawsuit, ACE, ACLU and ADAP, intervened in AASB’s lawsuit because of the Constitutional claim being made.

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*Continued on page 5*

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*Continued from page 4*

AASB was successful in the trial court on both the constitutional and statutory claims in a preliminary injunction hearing. The trial court's ruling was appealed to the Alabama Supreme Court. AASB dropped its constitutional claim during the appeal and limited itself to the claim based on the Alabama statute.

Although the constitutional claim was removed from the Alabama Supreme Court's consideration in AASB's lawsuit, the Alabama Supreme Court decided, on its own initiative, to re-examine issues previously decided in the Equity Funding Lawsuit. In the late Summer of 2001, the Alabama Supreme Court asked the parties to brief the issue of the finality of the Liability Order. In January 2002, the Alabama Supreme Court asked the parties to file briefs concerning the constitutional right of children in Alabama to a public education, the standing of the parties to assert their claims, and subject-matter jurisdiction.

In late May 2002, the Alabama Supreme Court finally issued its opinion. The majority of the justices ruled on the basis of justiciability, that is, the Alabama Supreme Court determined that matters pertaining to education in Alabama were properly in the hands of the legislature, and that the judiciary did not have authority to enter any orders concerning the manner in which education was funded. The Alabama Supreme Court therefore dismissed the lawsuit. Significantly, however, the Alabama Supreme Court left intact the Liability Order.

Therefore, although ADAP is severely disappointed by the decision of the Alabama Supreme Court to dismiss further remedy proceedings in the Equity Funding Lawsuit, ADAP takes some solace from the Alabama Supreme Court's decision to leave the Liability Order in place. The Liability Order, issued by Montgomery County Circuit Court Judge Eugene Reese on March 31,

1993, declares the State of Alabama in violation of the 1901 Constitution of Alabama by failing to provide Alabama's public school children an adequate and equi-

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The Liability Order also declares the State in violation of the Alabama Exceptional Children's Act by failing to provide an appropriate education and special services to children with disabilities, . . .

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table education. The Liability Order also declares the State in violation of the Alabama Exceptional Children's Act by failing to provide an appropriate education and special services to children with disabilities, and in violation of the due process clause of the Alabama Constitution by using an arbitrary and irrational method to distribute special education funding.

The legislative and executive branches thus remain under constitutional and statutory obligations to ensure that all of Alabama's public schoolchildren are provided with an education that is equitable, adequate and appropriate. ADAP urges all Alabama citizens to turn their attention to ensuring that our elected representatives fulfill that responsibility. To that end, ADAP notes that the State Superintendent of Education and the State Board of Education have recently completed work on a comprehensive adequacy plan for public education in the State. Implementation of this plan will require a substantial infusion of additional resources to support public education. ADAP hopes that the Governor and the Legislature will give serious consideration to this plan as they begin the process of providing a remedy for the ongoing violations of the rights of Alabama's schoolchildren to an adequate, equitable and appropriate education.

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*Continued from page 1*

Americans with mental illness, he said, "deserve a health care system that treats their illness with the same urgency as a physical illness." He said that the Commission is charged with making "concrete recommendations for immediate improvements" that "must be implemented by the Federal Government, the state government, local agencies, as well as public and private health care providers."

Thanks to the Substance Abuse and Mental Health Services Administration Newsletter Vol. X, No.2 Spring 2002 and the U.S. Department of Health and Human Resources.

# Department of Justice

## **UNDER AGREEMENT WITH JUSTICE DEPARTMENT SUPERSHUTTLE INTERNATIONAL, INC. TO IMPROVE SERVICE FOR TRAVELERS WHO USE WHEELCHAIRS**

The Department of Justice and SuperShuttle International, Inc. have signed a settlement agreement designed to ensure that the nation's largest door-to-door airport shuttle company provides the same level of service to wheelchair users as it provides to the general public. This is the first agreement reached with a national company that provides transportation on demand, as opposed to transportation along a fixed route on a fixed schedule.

The Department opened a nationwide compliance review of SuperShuttle after receiving complaints against its Dallas/Ft. Worth subsidiary for failing to provide accessible transportation. The settlement covers the company's 11 facilities in Phoenix, Los Angeles, Sacramento, San Francisco, Orange County, Baltimore, Washington, D.C., New York City, Denver, Dallas/Ft. Worth and Tampa Bay.

"It is important to ensure that the level of service available to customers who use wheelchairs is equal to that enjoyed by the general public" said Ralph F. Boyd Jr., Assistant Attorney General for Civil Rights. "SuperShuttle has fully cooperated with the Department and as a result will improve its much needed service to travelers who use wheelchairs."

The settlement requires SuperShuttle to acquire additional accessible vehicles at its 11 corporately owned facilities, to collect comparative data on the timeliness and quality of service, and to revisit with the Department after 18 months whether additional action is necessary in order to maintain an equivalent level of service for individuals who use wheelchairs.

Under the agreement, the company will have two accessible vehicles at each of the 11 locations within a year, as well as standing subcontracts with accessible transportation providers to meet overflow demand. It will track the timeliness of pick-ups for the general public as compared to wheelchair users and will conduct quarterly customer surveys of each group of riders in each city. Additional vans and/or subcontracts may be required if a review of the data after 18 months indicates that the traffic in any locality warrants such action.

Title III of the Americans with Disabilities Act gives people with disabilities the right to full and equal enjoyment of public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce. People interested in finding out more about the ADA or the agreements can access them through the ADA home page <http://www.usdoj.gov/crt/ada/adahom1.htm> or call the toll-free ADA Information Line at (800) 514-0301 or (800) 514-0383 (TTY).



# 10 Year Medical Assistance Perspective

Steve Gold - Information Bulletin # 36

THOUGH THESE STATISTICS LOOK AT MONEY, THE END RESULT OF SHIFTING THE MONEY IS THAT REAL PEOPLE WITH DISABILITIES ARE MOVING INTO THE COMMUNITY AND STAYING OUT OF NURSING HOMES AND OTHER INSTITUTIONS.

Progress is slowly but surely being made to turn around the institutional bias in Medical Assistance's long term care (Medicaid Title XIX). Since we are all so busy advocating, sometimes we don't step back and look at our successes. We need to celebrate our victories, recognizing we still have a long way to go to reform the system so no person is forced into a nursing home or other institution. What follows is a 10 year look—from 1991 to 2001.

In 1991, of the total Medical Assistance long term care expenditures, institutional care received 86% (funds for nursing homes and ICF-MRs). Community-based long term care (home health, personal care options and waivers) received only 14% of the total long-term care expenditures.

In 1996, institutional care was reduced to 79% and the community-based care received 21%.

By FY 2001, institutional care was down to 70.4% and the community-based **YOUR GRASS ROOTS PRESSURE** caused these changes!!!

In dollar terms the 14.5% shift represents an \$18 billion dollar increase in community-based long

term care in medical assistance services over the 10 years. A breakdown of this \$18 billion shows that the bulk (\$13 billion) went to increases in waivers. Lots of credit goes to the MR/DD advocates in successfully forcing their states to use the waivers to get people out of the ICF-MRs and state center institutions.

The aged and disabled community could learn a lot from the MR/DD advocates about using the Medicaid waiver process to get and keep folks out of nursing homes.

What advocates should do:

1. Celebrate our victories. Let's recognize we're winning the struggle.
2. **INCREASE THE PRESSURE** to force your state Medical Assistance director and your state legislatures to keep shifting funds to the community (waivers, personal care and home health).
3. Demand that "the money should follow the individual." If Texas and Missouri can do it, your state can. Persons with disabilities should have the choice of where they want to live.

**DON'T MOURN; ORGANIZE.**

*The Disability Odyssey continues. . . .*

*Patriotism is not a short and frenzied outburst of emotion, but the tranquil and steady dedication of a lifetime.*

*Adlai E. Stevenson, Jr.*



# Why should you create a newsletter?

- To keep members and the public updated.
- To educate about issues and ideas concerning your group.
- To build unity and a sense of pride among members.
- To spark new interest in and recognition of your group.

National Alliance for the Mentally Ill (NAMI) Ohio, a statewide mental health advocacy organization, has recently developed a free, online tutorial, *Publishing Newsletters People Will Read*. NAMI Ohio newsletter editor, Velma Beale, developed the tutorial in response to overwhelming demand from the field. “It is a common need that our local affiliates have—trying to get out a

newsletter,” says Beale. “Often people need to produce something, but they’ve never done anything like that before and they just don’t know where to start.”

The tutorial, which can be accessed on the Internet at [www.namiohio.org](http://www.namiohio.org), covers basic elements of newsletter production, including defining the publication’s purpose and audience; determining budget; designing, editing and writing; arranging for distribution; and measuring success.

“The first purpose of a newsletter is to inform and educate, especially in the mental health field,” says Beale. “To do that well, you need to present materials in a format that is readable, appealing and understandable.”

A newsletter is also a reflection of its organization. Beale, a former English teacher, does not like to see sloppy work. “It demonstrates the credibility and professionalism—even of volunteer organizations—to do as good a quality newsletter as you can produce. Even if you are photocopying your newsletter, you can do it well.”

Adapted from NAMI Ohio’s online tutorial, *Publishing Newsletters People Will Read*.



*Airmail* is funded 100% with federal funds through: • Administration on Developmental Disabilities (PADD) • Center for Mental Health Services (PAIMI) • Social Security Administration (PABSS) • U.S. Department of Education/Rehabilitation Services (PAIR and PAAT)

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Alabama Disabilities Advocacy Program  
School of Law Clinical Programs  
Box 870395  
Tuscaloosa, AL 35487-0395

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The Medicare program took action that will provide reassurance to chronically disabled homebound Medicare beneficiaries that they can continue to receive home health care even if they leave their homes for special non-medical purposes.

In new instructions, HHS' Centers for Medicare & Medicaid Services (CMS) directed home health agencies and the contractors that pay home health claims to be more flexible in determining if a severely disabled individual is qualified as homebound.

The instructions make clear that chronically disabled individuals, who otherwise qualify as homebound, should not lose home health services because they leave their homes in-

## CMS Acts to Protect Coverage for Homebound Beneficiaries

frequently for short periods of time for special occasions, such as family reunions, graduations or funerals. In some instances, home health agencies and Medicare payment contractors have terminated home health benefits after a beneficiary attended a special event, even though the beneficiary otherwise continued to qualify as homebound.

"We want to make sure that every person who is covered by Medicare is treated fairly and sensibly," HHS Secretary Tommy G. Thompson said. "These new instructions will help guarantee that chronically disabled Americans who need Medicare's home health benefits will not lose their coverage if they leave their homes for special family occasions."

The new language in the program manual for home health agencies:

- Expands the list of examples used to illustrate occasional absences from the home and notes that the list is still not all inclusive;
- Adds the late stages of amyotrophic lateral sclerosis (ALS or Lou Gehrig's disease) or other

neurodegenerative disabilities to the list of examples of conditions that may indicate that the patient cannot leave his or her home; and

- Makes it clear that the determination as to whether a person is homebound is one that must be made over a period of time, not on a daily or weekly basis, so a few special trips outside the home would not be used to disqualify a patient who has a normal inability to leave the home.

"While Congress weighs the homebound definition in current law, we have the responsibility to make sure that chronically disabled people who are considered to be homebound can live a full life," CMS Administrator Tom Scully said. "By adding these examples, we make it clear that disabled Medicare beneficiaries can take advantage of an opportunity to go to their child's wedding or other special family occasion without the fear of losing vital benefits."

Under current law, to qualify as homebound, a Medicare beneficiary does not need to

### CONTENTS

Secretary Thompson Announces Creation of the HHS Office on Disability ...	2
<i>Atkins v. Virginia</i> Outlaws Execution of Persons with Mental Retardation .....	3
Picture Review of 2002 Disability Summit .....	4
The Home Depot Listens .....	6
Project Lifesaver .....	6
Independent Living Partnership Nursing Facility Transition Project .....	7
Is Your Doctor's Office Accessible? .....	8

*Continued on page 2*

Continued from page 1

be bedridden, but must generally be confined to his or her home. If the patient does leave the home for non-medical purposes, these absences must be for short periods of time or infrequently. In 2000, Congress expanded the homebound definition to allow patients to attend adult day care programs or religious services.

Medicare's \$13 billion home health benefit provides short-term health and personal care services to beneficiaries who have a need for home health services and qualify as homebound. An estimated 2.5 million Medicare beneficiaries will receive home health services this year.

*U.S. Department of Health and Human Services Press Release - Friday, July 26, 2002*

Alabama Disabilities Advocacy Program (ADAP) is the federally mandated, statewide "Protection and Advocacy" system serving eligible individuals with disabilities in Alabama.

**Director - Reuben W. Cook**

**Associate Director - Ellen Gillespie**

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*Airmail* provides information on issues and events of interest to people concerned about the rights of persons with disabilities. Organizations and individuals are encouraged to submit articles to be considered for publication. Inquiries may be sent to Segail I. Friedman, Information Specialist, at the address below.

Box 870395

Tuscaloosa, AL 35487-0395

205-348-4928 - V/TTY

205-348-3909 - FAX

800-826-1675 - V/TTY

e-mail: ADAP@law.ua.edu

website: <http://www.adap.net>



## SECRETARY THOMPSON ANNOUNCES CREATION OF THE HHS OFFICE ON DISABILITY

### *Accelerates Departmental Work on the New Freedom Initiative*

*HHS Press Release, July 31, 2002*

HHS Secretary Tommy G. Thompson today announced the creation of the HHS Office on Disability to oversee the coordination, development and implementation of programs and special initiatives within HHS that impact people with disabilities. Margaret J. Giannini, M.D., F.A.A.P., currently the principal deputy assistant secretary for aging at the Administration on Aging (AoA), has been appointed the director to the new HHS Office on Disability.

The announcement builds on the work of President Bush's New Freedom Initiative, a comprehensive plan to tear down barriers facing people with disabilities, which prevent them from fully participating in community life. The new office will help centralize many of the recommended strategies outlined in a report to President Bush, which explored solutions to reducing barriers in all areas of society for people with disabilities.

"HHS is engaged in important and dynamic work to help the nearly 54 million Americans living with disabilities," Secretary Thompson said. "The new Office on Disability will bring increased focus and awareness to the issue, and will allow the department to interact with valuable partners in the most effective manner.

Margaret Giannini will bring a wealth of expertise to the position and we look forward to her leadership."

As head of the new office, Giannini will oversee the coordination of HHS disability issues and special initiatives. Preparations are currently underway to officially open the new office in the fall of 2002.

Prior to joining AoA, Giannini was the deputy assistant chief medical director for Rehabilitation and Prosthetics of the Department of Veterans Affairs in Washington, D.C. In 1979, former President Jimmy Carter appointed Dr. Giannini as the first Director of the National Institute of Handicapped Research, now known as the National Institute of Disability and Rehabilitation Research.

Additionally, Giannini was a founder and director of the University Center of Excellence on Developmental Disabilities of New York Medical College, the first and largest facility for the developmentally disabled in the United States and the world. She is a Diplomate, American Board of Pediatrics; a Fellow, American Academy of Pediatrics; and a member of the Institute of the Medicine of the National Academy of Sciences.

# *Atkins v. Virginia* Outlaws Execution of Persons with Mental Retardation

by Mike Forton, Law Student

On June 20<sup>th</sup> the Supreme Court issued an opinion in *Atkins v. Virginia*, ruling that the execution of persons with mental retardation is unconstitutionally excessive. The Court relied on the diminished capacity of persons with mental retardation to find that execution was not graduated and proportioned to the offense.

The Court's decision overturned their previous decision, in *Penry v. Lynaugh*, which upheld the constitutionality of executing persons with mental retardation. The Court in *Penry* had cited "evolving standards of decency" as being a guiding factor for what is "excessive" under the Eighth Amendment. Since *Penry*, when only two states had such laws, the federal government and sixteen other states have created statutes forbidding execution of persons with mental retardation, creating new standards of decency and prompting the court to re-examine the issue.

Justice John Paul Stevens, who delivered the opinion of the court, discussed the implications of the Eighth Amendment's "cruel and unusual punishment" in the execution of persons with mental retardation. Stevens also discussed the role of the opinions of citizenry and legislators in the Court's decision-making process. In his dissent Chief Justice Rehnquist, joined by Justices Scalia and Thomas, accused the majority of using state legislation as a *post hoc* rationalize rather than an objective factor.

*Penry* had already garnered the criticism of the American Bar Association. The ABA's official policy since 1989 has held that the execution of persons with mental retardation is unacceptable in a civilized society, irrespective of their guilt or innocence. In 1997, the continued imposition of the death penalty on persons with mental retardation and juveniles contributed to the ABA's call for a nationwide moratorium on the death penalty.

Amicus briefs in support of *Atkins* were considered on behalf of nine veterans of the American Foreign Service, the European Union, the American Bar Association, the U.S. Catholic Conference, the American Association on Mental Retardation, the American

Psychological Association, and the American Civil Liberties Union. The veterans, as well as the European Union, cited the excessive problems suffered in international relation due to America's policy of executing persons with mental retardation. In allowing persons with mental retardation to be put to death, the U.S. had been in the company of only one other country in the world—Uzbekistan.

Another problem that many mental health commentators have pointed out, is that this population's characteristic suggestibility and willingness to please leads them to confess—sometimes falsely—to capital crimes. In one 1983 case, police convinced Earl Washington, a person with mental retardation, to make a statement concerning the rape and murder of a woman in Culpepper, Virginia, in 1982. The statements were used against him and in 1984 he was convicted and sentenced to death. Sixteen years later, DNA tests confirmed that Washington was innocent and he received an absolute pardon.

*Atkins* seems to be another step in an increasing scrutiny in dealing with the death penalty in America. The Supreme Court, only four days after issuing *Atkins*, ruled in *Ring v. Arizona* that it was unconstitutional for states to allow judges to override jury verdicts and instate the death penalty. Only weeks later in *United States v. Alan Quinones*, New York District Court Judge Rakoff, citing *Atkins*, ruled the death penalty completely unconstitutional. While most commentators expect the Second Circuit Court of Appeals to overturn Rakoff's opinion, this case might be a situation in which the Supreme Court can deal decisively with the constitutionality of the death penalty.

Out of the world's 195 recognized nations, 110 have either formally or in practice abolished the death penalty. The United States ranks third overall, behind China and the Democratic Republic of Congo in executions. Combined with the fourth ranked nation, Iran, the four leading nations represent over 80 percent of the known executions. To date, only eight states have banned execution outright.



## Another Successful Disability Summit!

The Disability Summit 2002 brought together more than 170 people with disabilities, their family members and their advocates in Tuscaloosa. The Summit successfully accomplished its mission to "create a forum for people with disabilities, their families, and advocates to speak out about their needs and concerns. The Summit also provides an opportunity for people with disabilities, advocates, and families to organize and empower themselves to make their voices heard by Alabama's decision makers."

The three areas of interest this year were:

- Voting Issues in Alabama and Voter Registration**
- Special Education—Legislation and Monitoring**
- Systems Change—Medicaid, Funding and Olmstead Plan**



BILITY





SUMMIT





# The Home Depot Listens

The Home Depot, the world's largest home improvement retailer, has announced its intention to pursue federal government business. The announcement marks a change in the company's previous policy, which precluded it from selling to any federal governmental agency or entity, including contractors purchasing materials for use on federally funded construction projects.

The previous policy was announced in a press release posted to the retailer's website (<http://www.homedepot.com>) on June 16 and it was only a few weeks before then that Home Depot sent a memorandum to its retail outlets instructing them to decline any purchase of materials made by or for the federal government. Home Depot said the no-sale policy was an old practice, which came as a surprise to many federal contractors who have been dealing with the store for years. Speculation was that Home Depot officials had become concerned that doing business with the federal government would cause the retailer to be classified as a government contractor and thereby subject to innumerable government regulations. [Editor's note: *Such compliance would include the ADA and its provisions requiring access for people with disabilities.*]

Home Depot said the decision to reverse this position was based on feedback from its associates, customers and a further evaluation of the systems and administrative requirements necessary to become a federal contractor. "Home Depot has always listened to its associates and customers and responded accordingly," said Bob Nardelli, chairman, president and CEO of The Home Depot. "We've always supported the federal and local governments during emergencies and natural disasters through donations and volunteer efforts. Now, we'll be able to support them as part of our regular business as well."

Founded in 1978 and based in Atlanta, Georgia, The Home Depot operates more than 1400 stores in the US, Canada, Mexico and the Caribbean. Last year, *Fortune* magazine named The Home Depot the number one Specialty Retailer and sixth Most Admired Company in America.

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## PROJECT LIFESAVER

*A program of the Tuscaloosa County Sheriff's Office and Caring Congregations.*

**The mission** of Project Lifesaver is to use state of the art technology in assisting those who care for victims of Alzheimer's and other dementias. The program provides the technology needed to quickly locate someone who has become disoriented and lost. The ability to find someone quickly prevents injury and provides peace of mind to caregivers. This program can also be used for locating children with autism, Down's syndrome, or other brain disorders.

People participating in the program wear a bracelet that contains a personal recorded frequency that can be tracked on foot, by car, or helicopter. Each one-ounce battery-operated radio transmitter emits an automatic tracking signal every second, 24 hours a day. For more information, call the Tuscaloosa County Sheriff's Office at 752-0616 or Caring Days at 752-6240.

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## INDEPENDENT LIVING PARTNERSHIP NURSING FACILITY TRANSITION PROJECT

**B**irmingham Independent Living Center (BILC), in collaboration with its partners, is developing a model program to assist people with disabilities transition from nursing homes to the community. The Independent Living Partnership Nursing Facility Transition Project will identify and obtain both the transition and long-term supports needed to do so. Through a collaborative effort in selected urban and rural areas, this project will develop the infrastructure, partnerships, and community based services that will be required to offer the choice of community living to nursing home residents across the state.

The target population will include nursing home residents who express a desire to return to the community, regardless of age or disability, so long as their health and safety needs can be met in the community. It is anticipated that 50 people will transition from nursing facilities to the community during the three-year project period. The project will encompass the two most populous areas of the state: The Greater Birmingham area and the Greater Mobile area. Both rural and urban communities are included in the catchment areas. BILC will provide transitional services in the five-county Greater Birmingham area, while the Independent Living Center of Mobile (MILC) will provide such services in seven counties in Southwest Alabama.

An outreach program will inform nursing home residents and families regarding the availability of long-term services to support community living. People with disabilities, seniors, and family members will be trained and hired as part-time peer outreach advocates to identify potential candidates for transition. Staff will work closely with the nursing home ombudsman staff and medical social workers to identify nursing home

residents. This project will determine whether Minimum Data Sets (MDS), currently being used by some states to identify candidates for nursing home transition, are an accurate predictor of the kinds and level of supports people need to successfully transition from nursing home to the community.

Full-time community transitional advocates in Birmingham and Mobile will assist nursing home residents plan their moves and obtain supports that will be required. Plans will be developed according to independent living and person-centered principles. Community supports that will be put in place include personal assistance, housing, home modification, advocacy, peer support, transitional subsidies, and other resources.

Partnerships at the local and state level are a key to the success of this program. The Director of Alabama Medicaid's Long-Term Care Program will convene a group of statewide partners to advise on project direction and assist in the development of policy and sustainable resources for implementation. Local implementation teams will be developed in Birmingham and Mobile to enhance service planning and the development of local resources.

The model developed here can be replicated by other independent living centers and organizations throughout the United States. During the third year, this project will submit proposals to make presentations to statewide, regional, and national conferences in order to present the results.

For further information, contact Dan Kessler at 205/251-5403 or e-mail [dgkessle@bellsouth.net](mailto:dgkessle@bellsouth.net).

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# Is your doctor's office accessible?

The U.S. Department of Justice wants to create a new policy to make the inside of hospitals and doctors' offices accessible to people with disabilities and physical limitations. U.S. Department of Justice Disability Rights Division lawyer Amanda Maisels would like to hear ASAP from people with disabilities and physical limitations, especially women who use wheelchairs, who have:

- Been unable to enter doctors' offices because of steps;
- Been unable to have gynecological or other medical examinations because they could not transfer to high examination tables without the danger and embarrassment of being lifted;
- Been unable, because of their wheelchairs, small stature or physical limitations, to get close to a mammography machine;
- Been unable to have X-rays or other imaging procedures (MRI, CT scans) or have postponed or refused procedures because they couldn't access high X-ray equipment.

Send your experiences and your request for a new policy and expeditious enforcement of "internal accessibility" to:

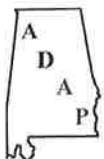
[Amanda.Maisels@usdoj.gov](mailto:Amanda.Maisels@usdoj.gov) and [aswweinberg@njleg.org](mailto:aswweinberg@njleg.org).

*Monday Morning*, Vol. 8, Number 11, July 18, 2002

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## ADAP SUPPORTS EQUAL HOUSING OPPORTUNITY

*Jeremy Scherer, Law Student*

ADAP represents four low-income tenants with disabilities residing at River Bend Apartments in Riverside, Alabama. ADAP is seeking judicial intervention to prevent the tenants being displaced from their homes. Absent our efforts, our clients will be forced to find alternative housing outside of their community as a result of the owners' attempt to prepay its federal government loans which have 25 years left on their terms. By prepaying the loans, the owners are able to raise rents far above the means of our clients.

Riverside Coves Apartments, Inc. (Riverside), financed River Bend apartments with 2.4 million dollars in USDA loans implemented by USDA's Rural Housing Services (RHS). To receive the loans, Riverside agreed to maintain the apartments for the benefit of low-income individuals by offering affordable rent. In exchange for participat-

ing in the RHS rental assistance program, Riverside Coves was guaranteed a reasonable profit and a low, 1%, interest rate on their federal loan. Although an RHS official offered Riverside Coves financial incentives not to prepay, River Bend tenants were notified in February 2001 of Riverside Coves' intent to prepay its loans.



RHS did not accept Riverside's original request for prepayment without restrictions, but gave permission to prepay with restrictions. However, Riverside refused to accept the "Restrictive Use Agreement" that would protect 73 River Bend tenants from being displaced without adequate housing for low-income tenants.

In June 2002, after numerous appeals of RHS's denial of Riverside's request to prepay without restrictions, Riverside's request to prepay without restrictions was granted.

River Bend has informed tenants they must either agree to pay the higher rent or apply for HUD Section 8 vouchers to stay in their homes. Riverside is under no obligation to accept Section 8 vouchers, and therefore can refuse to honor the vouchers at any time.

Because they could not afford the upcoming rent increase, many River Bend tenants have moved to other housing facilities within the state, or have left the state altogether. Some tenants now pay higher rent because they forfeited their RHS subsidy for HUD section 8 vouchers. Others have had difficulty finding substitute housing in the Riverside area because the Lincoln Honda plant has brought an influx of people, forcing tenants to look to Jefferson or Talledega counties to find realtors who will honor their RHS rental assistance subsidy. The possibility of Section 8 vouchers offers little relief because there is a 30+ person waiting list with the Leeds Housing Authority Office, and HUD personnel do not know when more will be available.

This ADAP litigation is directed by Laura McNally, Lecturer in Clinical Legal Education/Staff Attorney, along with the assistance of James Tucker, ADAP's Litigation Director. Multiple legal clerks and clinical law students are assisting Laura in her efforts.



### Election Day in Alabama is Tuesday, November 5, 2002.

Many important offices will be decided. We urge you to get out and vote. If you have any problems with accessibility or related issues, please call any of the following for assistance:

- your local county probate judge
- ADAP at 1-800-826-1675
- Alabama Secretary of State, Elections Division, at 1-800-274-VOTE (8683)
- Internal Advocacy Office of DMH/MR at 1-800-367-0955.

### CONTENTS

<i>Database Threatens Privacy, Could Lead to Discrimination</i> .....	2
<i>ADAP Reapplies for PABSS Grant</i> .....	3
<i>ADAP Receives Traumatic Brain Injury Grant</i> .....	3
<i>Accountability in Special Education: Results are in from Alabama's New Monitoring System</i> .....	4
<i>The Arc Respite Care</i> .....	5
<i>Shocked</i> .....	6
<i>Sticks &amp; Stones</i> .....	6
<i>PIPA</i> .....	7
<i>Grants Awarded by U.S.</i> .....	7
<i>Websites</i> .....	8

# Database Threatens Privacy, Could Lead to Discrimination

Legislative Update, Bazelon Center for Mental Health Law, August 2002

New legislation would require states to develop lists of people who have been committed to a mental hospital. The bill is designed to strengthen the National Instant Criminal Background Check System (NICS), a computerized system managed by the FBI which searches various records to find whether an individual is prohibited by law from purchasing a gun. Advocates for the rights of people with mental illness fear that the overly broad definitions used in the law and its lack of privacy protections may lead to violations of the rights of people with mental disabilities.

Under the Brady Handgun Prevention Act, gun dealers must obtain a background check on individuals who wish to purchase a handgun. Generally, these checks are

done through the NICS. Current law prohibits someone "adjudicated as a mental defective or those committed to a mental institution" from purchasing a gun. The new legislation, "The Our Lady of Peace Act" (H.R. 4757 and S. 2868), would place on the NICS list the names of individuals who are in several categories, including:

- ◆ Individuals involuntarily committed to a mental institution by a court, board, commission or other authority;
- ◆ Individuals committed because they lack the mental capacity to contract or manage their own affairs; and
- ◆ Defendants in criminal cases adjudicated as not guilty by reason or insanity or found incompetent to stand trial.

The list would include individuals who are found to be "gravely disabled" or otherwise unable to look after their basic needs as a result of a mental illness—even without any indication that they pose a danger to themselves or others. The bill's broad application would also prohibit individuals with mental illnesses who committed a minor, non-violent misdemeanor from owning a gun.

The legislation provides substantial funding to enable states to develop and submit lists of people adjudicated to be mentally ill or perpetrators of domestic violence—\$350 million each year for three years.

The majority of these individuals has done nothing wrong and has no criminal charges against them. Their commitment could well have nothing to do with even temporary dangerousness. Since there is no automatic purging of the NICS list after a set period of time, names could remain on the list of "mentally defective" persons forever.

Mental health advocates fear that such broad, stigmatizing definitions of "mentally defective" would erode the rights of people with mental illnesses and would promote the idea that violence and mental illness are linked, which is a notion disproved by studies showing that people with mental illnesses are no more violent than others.

Advocates also fear that the bill's lack of strong privacy protections for sensitive mental health information may encourage discrimination unrelated to gun ownership. If mental health information in NICS is shared, people with mental illnesses may face housing, credit or employment discrimination stemming from knowledge of their mental illness.

Alabama Senator Jeff Sessions is on the Senate Judiciary Committee that is considering the new legislation. Contact him at <http://sessions.senate.gov/pages/off2.htm> or e-mail at [senator@sessions.senate.gov](mailto:senator@sessions.senate.gov) or by mail at 493 Russell Senate Office Building, Washington, D.C. 20510-0104.

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**ADAP  
REAPPLIES  
FOR  
PABSS  
GRANT**

*Ross Perdue, Case Advocate*

ADAP has reapplied for the continuation of the Protection and Advocacy for Beneficiaries of Social Security (PABSS) grant for the upcoming year.

The central focus of the work under the PABSS program is to protect Social Security beneficiaries' rights to obtain, maintain, or retain

employment. PABSS provides advocacy and assistance to Social Security beneficiaries who are attempting to work, either through alternative dispute resolution or any combination of procedures that may be used prior to litigation within financial constraints of the grant award.

PABSS coordinates with entities including, but not limited to, employers, attorneys, governmental agencies, benefits planning, assistance, and outreach (BPAO) programs, employment networks, advocacy organizations, Vocational Rehabilitation programs, and other service providers/entities involved in the Social Security beneficiaries return to work efforts.

PABSS will continue handling information and referrals while working to resolve complaints/concerns which include, but are not limited to, employment discrimination issues, disputes regarding the Ticket to Work and Work Incentives Improvement Act (TWWIIA), issues regarding the availability of workforce development programs including nondiscrimination provisions, the Medicaid Buy-in Program, social service program appeals relating to employment, complaints against employers and employment networks, objections to BPAO programs, engaging with advocacy organizations, and other service providers/entities involved in the Social Security beneficiary's return to work effort.

## **ADAP RECEIVES TRAUMATIC BRAIN INJURY GRANT**

*Ann Marshall, Coordinator of Outreach and Training*

The Alabama Disabilities Advocacy Program (ADAP), part of the Clinical Law Program at the University of Alabama School of Law, was recently awarded a federal grant to advocate for Alabama citizens with traumatic brain injuries (TBI). The three-year grant is funded by the U.S. Department of Health & Human Services, Maternal and Child Health Bureau.

"With this funding, we will be able to advocate for children and adults with TBI in the schools, the workplace and the community," said Reuben Cook, ADAP's Director. "We are very excited about this new opportunity to further help people with disabilities." ADAP is Alabama's federally funded statewide protection and advocacy system designated to protect the rights of Alabama's adults and children with disabilities.

"With this grant, Protection and Advocacy services for citizens of Alabama disabled by traumatic brain injuries will be enhanced, which will increase successful community reintegration," said Charles Priest, Executive Director of the Alabama Head Injury Foundation. "This will benefit the individual with TBI, their family and the community at large," he said. "Additionally, ADAP's efforts will complement other federal, state and private initiatives underway in Alabama to address the needs of this population."

The grant will focus on three areas of advocacy. ADAP will advocate for services for children with TBI in school systems and for individuals who may need services and supports in the community. A third effort will provide technical assistance and advocacy for clients with TBI in the vocational rehabilitation system.

Along with the Alabama Head Injury Foundation, ADAP will also work in collaboration with other state-wide groups who serve people with traumatic brain injuries, such as the Alabama Department of Rehabilitation Services and the Alabama Department of Mental Health and Mental Retardation.

The grant award is for \$50,000 per year and ADAP will begin work on the new TBI project this fall.

For more information about the new services ADAP can provide for people with traumatic brain injuries, call 1-800-826-1675. You may also contact ADAP by e-mail at [adap@law.ua.edu](mailto:adap@law.ua.edu) or check out the web site at [www.adap.net](http://www.adap.net).

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## ***ACCOUNTABILITY IN SPECIAL EDUCATION: RESULTS ARE IN FROM ALABAMA'S NEW MONITORING SYSTEM***

Few parents of schoolchildren with disabilities will be surprised by the results of the special education monitoring done last year by the Alabama State Department of Education (SDE). Over a quarter century after the passage of what is now the Individuals with Disabilities Education Act (IDEA), many Alabama school districts are still out of compliance with the most fundamental principles of this key federal civil rights law. What were some of the problems state monitors found in the sixty school districts monitored this past school year?

- Poor IEP development and implementation
- Children not being educated in their least restrictive environment
- Weak transition services for adolescents in grades 7-12
- Poor documentation on Occupational Diploma portfolios
- Inadequate progress reports on IEP goals and benchmarks
- Eligibility and reevaluation standards not followed

### **How Does Alabama Monitor School Districts?**

In addition to the customary examination of procedural compliance issues, the SDE began focusing this past year on the quality of the services provided to children with special needs. In their monitoring, state teams extensively study the records and programming of a sample of district students, chosen randomly by the SDE. Team members interview the children's teachers, service providers, parents and, when appropriate, the children themselves. Among other things, state monitors examine student access to school-wide programs, services and opportunities. They evaluate the quality of the district's IEPs and their implementation. Monitors examine the district's provision of appropriate support and services to ensure that children are educated in their least restrictive environment. They evaluate a school system's understanding of a student's situation and its responsiveness to changes in a student's needs. Based both on the quality and procedural compliance reviews, a monitoring report is issued addressing compliance infractions and suggesting improvement strategies. A school system is required to issue corrective actions plans to remedy all areas of non-compliance.

### **Parents Should Not Have To Be "IDEA Enforcers"**

In its comprehensive report on IDEA implementation published in 2000<sup>1</sup>, the National Council on Disabilities observed that "too many parents continue to expend endless resources in confronting obstacles to their child's most basic right to an appropriate education, often at the expense of their personal lives, their financial livelihoods, and their careers." Indeed, ADAP is contacted daily by parents who feel compelled to become IDEA enforcers when federal and state systems fail to ensure that schools obey the law. ADAP sees both the toll that this burden takes on parents and the valuable instructional opportunities wasted when children are poorly served. For these reasons, ADAP continues to advocate for rigorous, credible, and effective monitoring and enforcement processes at both the state and federal level. For instance, ADAP advocates for the resolution of what it sees as trouble spots in Alabama's special education monitoring system. Does the SDE have the personnel and resources to provide technical assistance to school districts to help them fix problems? Is there a procedure in place to ensure consistency and reliability between monitoring teams? How will the SDE address the unique issues relating to the education of children in segregated settings like residential facilities or district resource centers? How will the SDE ensure that corrective actions plans are carried out by school districts and that they "stick"? What kind of enforcement actions will the SDE take if these plans are not carried out appropriately? How are consumers going to be more included in the monitoring process? Once issues like these are resolved, the monitoring system will hold great promise for improving services to children with disabilities in Alabama.

<sup>1</sup> See [http://www.ncd.gov/newsroom/publications/backtoschool\\_1.html](http://www.ncd.gov/newsroom/publications/backtoschool_1.html) for an electronic version of the NCD report, "Back to School on Civil Rights: Advancing the Federal Commitment to Leave No Child Behind."

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## INTERESTED IN HOW YOUR DISTRICT PERFORMED?

The districts listed below were monitored during the 01-02 school year. Parents and consumers can obtain copies of the monitoring reports for these districts by contacting the Alabama Disabilities Advocacy Program at 1-800-826-1675 or via email at [ADAP@law.ua.edu](mailto:ADAP@law.ua.edu). Districts not listed here are scheduled to be monitored during the 02-03 school year. Feel free to contact ADAP with any questions regarding this year's monitoring schedule or any other question about monitoring and enforcement.

Alexander City	Cleburne County	Houston County	Opelika City
Anniston City	Conecuh County	Huntsville City	Perry County
Athens City	Crenshaw County	Jacksonville City	Pickens County
Attalla City	Decatur City	Jasper City	Piedmont City
Autauga County	Demopolis City	Jefferson County	Pike County
Baldwin County	Dothan City	Lamar County	St. Clair County
Bibb County	Elmore County	Lee County	Sumter County
Birmingham City	Fort Payne City	Limestone County	Talladega County
Brewton City	Gadsden City	Lowndes County	Tallapoosa County
Butler County	Geneva County	Macon County	Tallassee City
Calhoun County	Guntersville City	Madison County	Thomasville City
Chambers County	Hale County	Marengo County	Troy City
Cherokee County	Haleyville City	Marion County	Tuscaloosa City
Chilton County	Hartselle City	Marshall County	Tuscaloosa County
Clay County	Henry County	Mt. Brook City	Vestavia Hills City
			Wilcox County



## 2003 Alabama Respite Care Services Program

The Arc of Alabama, through a grant from the Alabama Department of Mental Health and Mental Retardation (DMH/MR), announces the 2003 Alabama Respite Care Services Program. The Alabama Respite Care Services Program will pay for the costs of respite care services for families of eligible persons with mental retardation and developmental disabilities in Alabama.

For the purposes of this Program, respite care is defined as the temporary relief of care duties for the primary caregiver (parent, grandparent, foster parent or guardian) for an eligible person with mental retardation and developmental disabilities. Families choose a person or community agency (service provider) to provide respite care services for the family of the eligible person in their home.

Families of persons with mental retardation and developmental disabilities who live in Alabama are eligible. Families may receive a maximum one-time grant of \$10 per hour for ten (10) hours of respite care services up to the maximum of \$100 per eligible person.

Applications may be submitted (with original signature) by the parent, guardian, or caregiver for an eligible person with mental retardation and/or developmental disabilities. Applications may be requested by calling The Arc of Alabama at (334) 262-7688 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except holidays.

Original and complete applications may be submitted via mail (no faxes accepted) to The Arc of Alabama, 300 South Hull Street, Montgomery, Alabama 36104-6105 between October 1, 2002 and December 31, 2002.

Applications will be reviewed by, and grants awarded by, The Arc of Alabama. Those families approved for respite care services grants will be notified in writing.

2003 RESPITE CARE SERVICES FUNDS MUST BE USED BY AUGUST 31, 2003. Form R-2003-1 10/01/02

For further information, please contact Tom Holmes, Executive Director, The Arc of Alabama, 334/262-7688 or FAX 334/834-9737 or e-mail: [ArcAlabama@juno.com](mailto:ArcAlabama@juno.com).

# SHOCKED

## The National Council on Disability (NCD) is appalled by the latest U.S. Supreme Court decisions involving the Americans with Disabilities Act (ADA).

NCD Bulletin, June 2002

In one of the most damaging decisions to date, *Chevron U.S.A. Inc. v. Mario Echazabal* (No. 00-1406), the U.S. Supreme Court ruled in a 9-0 decision that the ADA allows employers, not people with disabilities, to decide whether the risk of a certain job is too great, therefore excluding people with disabilities from applying or continuing to work at a position even if they pose no threat to others and they can perform all job functions and meet external health and safety standards. In so ruling, the Court gave deference to U.S. Equal Opportunity Commission regulations that expanded upon ADA's definition of "direct threat" to permit an exclusion from the workplace of people with disabilities who pose a direct threat to themselves. The Supreme Court endorsement of the "threat to self" defense encourages the view that people with disabilities need to be protected from themselves and from their choices.

In *Barnes et al. v. Gorman* (No. 01-682), another 9-0 decision, the Supreme Court continued its diminishment of the ADA by ruling that punitive damages may not be awarded in private suits brought under §202 of the ADA and §504 of the Rehabilitation Act. In this case, Jeffrey Gorman, who uses a wheelchair, was injured while being

taken to jail in a van after his arrest for trespassing at a Kansas City bar. Police officers removed him from his wheelchair, propped him on a bench in the van and tied him with his belt. During the trip to jail, he fell and injured his shoulder and back. Kansas City did not contest the actual and compensatory damages that a jury ordered it to pay for medical costs and lost income, which were about \$1 million. But the city challenged the \$1.2 million punitive damage award to Gorman.

In *Zelman et al. v. Simmons-Harris et al.* (No. 00-1751), a non-ADA case but one that has broad implications for disability rights, the Supreme Court upheld the constitutionality of school vouchers. This decision will have an enormous impact on children with disabilities, because many voucher schools refuse to accept or provide services for children with disabilities. Children with disabilities are often turned away from private schools, and when they are accepted they are often denied the protections afforded other students under the Individuals with Disabilities Education Act, ADA, and Section 504 of the Rehabilitation Act.

*Sticks & Stones--Personal Stories About Labeling* has recently been published by Self-Advocates Becoming Empowered (SABE). The announcement came through Janet Hunt-Hawkins a member of [advisors@listserv.syr.edu](mailto:advisors@listserv.syr.edu).

The publication was available for the first time at the National Self-Advocacy Conference in Buffalo, New York. The publication is now being offered through the web. You may visit the site below for more information. The second link is an order form for you to print and complete and mail along with your payment.

"*Sticks & Stones* is the work of people with disabilities speaking up from across the country...sharing their stories with us about what it has been like to grow-up and to live in our society with labels--and why labeling is so wrong," says Hunt-Hawkins. "It is a very touching collection of stories and photos. Please help us get this publication in everyone's hands."

If you cannot access the web, please e-mail Janet Hunt-Hawkins at [jhhpfnh@LR.net](mailto:jhhpfnh@LR.net) and she will send you details of the publication.

<http://www.peoplefirstofnh.org/SABE/Sticks&Stones.htm>

<http://www.peoplefirstofnh.org/SABE/S&S%20Order%20Form.htm>

# PARTNERS IN POLICYMAKING OF ALABAMA

P.O. Box 301410  
RSA Union Building • 100 North Union Street  
Montgomery, Alabama 36130-1410  
Montgomery: 334-242-3973  
1-800-846-3735  
FAX: 334-242-0797

The Alabama Council for Developmental Disabilities is currently seeking applications from interested persons who have a developmental disability or who are parents of young children with developmental disabilities to participate in the 2003 Partners in Policymaking Program (PIPA).

Partners in Policymaking of Alabama is a leadership training program for self-advocates and parents. It provides state-of-the-art knowledge about disability issues and builds the competencies necessary to support advocates who can effectively influence public officials.

Partners learn about current issues and best practices and become familiar with the policy making and legislative processes at the local, state and federal levels. The overall goal is to achieve a productive partnership between people needing services and using services and those in a position to make policy and law. Partners attend two-day training sessions (Friday and Saturday) eight times a year, beginning in February 2003 and ending in September 2003. Each session is devoted to specific topics with nationally known experts and presenters.

Topics include:

- < History of Disability Movements: Parents, Self Advocacy Movement, Independent Living, People First Language
- < Inclusive Education
- < Supported Employment/Supportive Living
- < Service Coordination/Vision
- < State Policymaking/Parliamentary Procedure
- < Federal Policy and Legislative Issues
- < Assistive Technology and Positioning
- < Community Organizing & Advocacy

Partners are expected to complete assignments between sessions and to commit to one major assignment, e.g., organizing a letter writing campaign or organizing special receptions or town meetings for public officials, etc.

Applications can be requested from the DD Council, by contacting 800-846-3735, e-mail: [adpc@mh.state.al.us](mailto:adpc@mh.state.al.us) or any of the number listed above. Thirty-five participants will be selected for the 2003 Partners Program. Applications must be postmarked by December 20, 2002 to be eligible. Selected participants will be notified by January 10, 2003.

## Grants Awarded by U.S. Department of Labor

*Office of Disability Employment Policy*

*October 2002 USDL 02-571*

Customized Employment Grant Awardees

More than \$5.4 million in U.S. Department of Labor grants has been awarded to eight Workforce Investment Boards across the United States. These grants provide for strategic planning and implementation activities designed to improve the employment and career advancement of people with disabilities. The key goal of each grant is to build the capacity in local One-Stop Career Centers to develop and implement customized employment services to persons with disabilities. The grants provide a vehicle for the local boards to systemically review their policies and practices in service to persons with disabilities and to incorporate new and innovative practices, as appropriate. Each grant is awarded for a one-year period, with four option years, subject to the availability of funds.

Alabama's grantee is:  
Alabama Department of Economic & Community Affairs  
401 Adams Avenue, P.O. Box 5690  
Montgomery, AL 36103  
Amount: \$747,032.00

## Websites – faster information through electronics

The National Health Law Program (NHelp) - [HealthCareCoach.com](http://healthcarecoach.com) - <http://healthcarecoach.com>

Dedicated to helping consumers get the most out of their health care, HealthCareCoach.com features hundreds of articles with information about everything from keeping health care costs down and coping with emergencies to dealing with denied claims and what people can do when they lose coverage.

Older Adult Consumer Mental Health Alliance (OACMHA, pronounced: Oak-ma) - <http://www.oacmha.com>

Disability World - [www.disabilityworld.org](http://www.disabilityworld.org)

Disability World is an on-line magazine which features disability news, views, research and reviews in the U.S. and around the world. It is published only online, every other month in English and every other month in Spanish. The magazine and accompanying database of international disability literature abstracts is funded in part by a grant from the U.S. National Institute on Disability and Rehabilitation Research. International news items from other groups or individuals are welcome. To contribute, send news of announcements by e-mail or attached word files by the 10<sup>th</sup> of each month in English to Barbara Duncan, [editor@disabilityworld.org](mailto:editor@disabilityworld.org) or in Spanish to Rosangela Berman Bieler, [espanol@disabilityworld.org](mailto:espanol@disabilityworld.org). Details about the overall project are available from the Director, Kathy Martinez, [Kathy@wid.org](mailto:Kathy@wid.org), or from the Project Manager, Jennifer Geagan, [Jennifer@wid.org](mailto:Jennifer@wid.org).

### ALABAMA COUNCIL FOR DEVELOPMENTAL DISABILITIES WEBSITES TO BOOKMARK:

Calendar of disability-related events, updated frequently - <http://www.acdd.org/Calendar/calendar.php>

Lists of Alabama resources - <http://www.acdd.org/Resources/alabama.htm>

See the Resources page for links to searchable databases and printable documents - <http://www.acdd.org/resources.htm>

Daily Living products [http://www.acdd.org/Links/assistive\\_technology/Daily\\_Living.htm](http://www.acdd.org/Links/assistive_technology/Daily_Living.htm)

New section of Wheelchair Accessories - [http://www.acdd.org/Links/assistive\\_technology/mobility/Wheelchairs.htm](http://www.acdd.org/Links/assistive_technology/mobility/Wheelchairs.htm)

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The University of Alabama  
Alabama Disabilities Advocacy Program  
School of Law Clinical Programs  
Box 870395  
Tuscaloosa, AL 35487-0395

Non-Profit Organization  
U.S. Postage Paid  
Tuscaloosa, AL 35401  
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