



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

July 13, 2009

The Honorable John Tanner
Chairman
Ways and Means Committee
Social Security Subcommittee
1129 Rayburn House Office Bldg.
Washington, DC 20515

Dear Mr. Chairman:

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Veterans Task Force and Social Security Task Force ask for your assistance in addressing a dilemma affecting military personnel family members with disabilities. CCD is a working coalition of national organizations working together to advocate for national public policy that ensures the self-determination, independence, empowerment, integration and inclusion of the 54 million children and adults with disabilities in all aspects of society.

As you know, in 1993, Congress allowed the use of self-funded special needs trusts (SNTs), both individual and pooled trusts, for Medicaid beneficiaries with disabilities to provide additional support for these individuals over the course of their lifetimes. Under the law, funds deposited in these trusts are exempt from state Medicaid means tests. In addition, it has been common practice for decades for families to establish third-party special needs trusts to provide for the future of an individual with severe disabilities after the death of the parents.

Unfortunately, one group of people with disabilities, survivors of military service members, is unable to benefit from SNTs because of statutory provisions regulating military survivor benefit plans (SBPs). SBPs allow retiring military personnel to pass on a portion of their retired pay to their survivors to provide them with some measure of financial security after their death. However, current federal law precludes payment of SBP annuities to anyone other than a "natural person" [10 USC 1450 (a) (4)]. As a result, these SBP funds may not be assigned to a special needs trust and must be paid directly to the survivor.

The practical impact of this is to render a SBP recipient with a disability ineligible for Medicaid because the annuity will exceed most state income thresholds. Military retirees are left with two equally unappealing options. They may terminate their SBP enrollment – a complicated process involving revision of their military records – and allow their surviving child with a disability to become indigent in order to qualify for state assistance. Or, they can retain their SBP and accept the fact that their child with a disability will be excluded from critical Medicaid long term supports and services.

Military retirees spend their careers defending the nation and its laws. It is inequitable that they should be denied a legal avenue afforded other members of the public by what appears to be a technical oversight. HR 2059 has been introduced to resolve this situation by authorizing payment of SBP annuities into special needs trusts set up for military retiree survivors with disabilities. We urge you to work with your colleagues on the Armed Services Committee to ensure passage of this legislation.

Thank you for your attention to our concerns. If you have any questions concerning this issue, please feel free to contact any of the following task force co-chairs – Veterans Task Force: Karen Bower, Bazelon Center for Mental Health Law, kbower@bazelong.org; Susan Prokop, Paralyzed Veterans of America, susanp@pva.org; Len Selfon, United Spinal Association, lselfon@unitedspinal.org. Social Security Task Force: Marty Ford, Disability Policy Collaboration, ford@thearc.org; Peggy Hathaway, United Spinal Association, phathaway@unitedspinal.org; Susan Prokop, PVA, susanp@pva.org; Ethel Zelenske, National Association of Social Security Claimants' Representatives, nosscrdc@att.net.

American Association of People with Disabilities
Bazelon Center for Mental Health Law
Brain Injury Association of America
Epilepsy Foundation
International Association of Business, Industry and Rehabilitation
National Association of Disability Representatives
National Association of State Head Injury Administrators
National Council on Independent Living
National Disability Rights Network
National Down Syndrome Congress
National Organization of Social Security Claimants' Representatives
National Rehabilitation Association
Paralyzed Veterans of America
Research Institute for Independent Living
The Arc of the United States
United Cerebral Palsy
United Spinal Association