

American Diabetes Association Statement Diabetes and the Americans with Disabilities Act

October 4, 2007

The American Diabetes Association (the Association) applauds the House Judiciary Subcommittee on the Constitution for holding a hearing on renewing the Americans with Disabilities Act (ADA). This is the first hearing on the ADA since Majority Leader Steny Hoyer and Representative James Sensenbrenner introduced H.R. 3195, the ADA Restoration Act, to restore the intent and protections of the Americans with Disabilities Act of 1990, and the Association is pleased for the opportunity to further explore the legislation in this forum.

Discrimination is one of the most prevalent policy-related issues that adversely affects people with diabetes. The Association has made ending discrimination against people with diabetes a priority and is committed to assisting those who encounter discrimination because of diabetes.

Enacted in 1990, the ADA promised to be a vital means to protect the interests of people with diabetes who face discrimination. It sought to provide an opportunity for all Americans, including people with disabilities, to enjoy independence, economic self-sufficiency and to be judged on the basis of their abilities, rather than their actual or perceived disabilities.

While this landmark civil rights legislation has provided numerous benefits, several problematic Supreme Court decisions have very seriously eroded the protections the Act provides to people with diabetes by limiting the scope of the ADA. It is clear from the record that when the ADA was enacted, Congress and President George H.W. Bush intended to protect people with diabetes from discrimination. Since that time, numerous courts have turned people with diabetes away finding, in essence, that they were doing too good of a job managing their disease to meet the statute's definition of disability. As a result, these individuals are not provided with any form of redress, even when they are told explicitly that they are being denied a job *because of* their diabetes. An employer can refuse to hire an individual with diabetes, claiming that he or she cannot safely perform the job because of his or her diabetes, but then prevent the employee from showing this isn't the case by successfully claiming that the individual's diabetes is so well-controlled that it doesn't rise to the level of "disability" as defined by the ADA. Thus, the person is too sick to perform the job, but too healthy to bring a claim for discrimination. Ironically, the better job a person does in trying to manage his or her diabetes, the less likely that person is to be protected from discrimination.

At the heart of the problem lies the definition of disability. To be protected from discrimination, an individual must have a physical impairment that substantially limits a major life activity, have a record of such an impairment, or be regarded as having such an impairment. People with diabetes began to face serious difficulties meeting this definition following the Supreme Court's decisions in a series of three cases in which the Court established that whether an individual has a disability must be determined in light of

National Office

1701 North Beauregard Street
Alexandria, VA 22311
Tel: 703-549-1500

Diabetes Information

call 1-800-DIABETES (1-800-342-2383)
online www.diabetes.org
The Association gratefully accepts gifts through your will.

The Mission of the American

Diabetes Association is to prevent and cure diabetes and to improve the lives of all people affected by diabetes.

the mitigating measures, such as insulin, that a person uses.¹ These problems were exacerbated by the Supreme Court's decision in *Toyota Manufacturing v. Williams* in which the Court ruled that the phrase "substantial limitation in a major life activity" must be "interpreted strictly to create a demanding standard for qualifying as disabled," and that "substantial limitation" means "prevents or severely restricts."²

H.R. 3195 amends the definition of "disability" so that the individuals Congress originally intended to protect from discrimination are covered under the ADA. Specifically, the bill prevents the courts from disqualifying an individual from protection because of the effects of "mitigating measures," ends the illogical requirement that individuals show they meet an impossibly high threshold of substantial limitation in a major life activity, and harmonizes the ADA with other civil rights laws by prohibiting discrimination "on the basis of disability."

Once again, the Association thanks the Committee for holding this hearing on renewing the ADA. We hope that this conversation leads to continued discussions by the full Committee and passage of the ADA Restoration Act of 2007. We look forward to working with the Committee on capitalizing upon the success of the Americans with Disabilities Act, while strengthening the Act to protect people with diabetes.

¹ *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999); *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516 (1999); *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555 (1999).

² *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184, 197 -198 (2002).

National Office

1701 North Beauregard Street
Alexandria, VA 22311
Tel: 703-549-1500

Diabetes Information

call 1-800-DIABETES (1-800-342-2383)
online www.diabetes.org
The Association gratefully accepts gifts through your will.

The Mission of the American

Diabetes Association is to prevent and cure diabetes and to improve the lives of all people affected by diabetes.