NON-TRADITIONAL FUNDING SOURCES AND FUNDING STRATEGIES FOR ASSISTIVE TECHNOLOGY

Creative Ways to Access Traditional AT Funding Sources, Some Little-Know AT Funding Sources and Funding Strategies

James R. Sheldon, Jr., Supervising Attorney
National Assistive Technology Advocacy Project
Neighborhood Legal Services, Inc.
237 Main Street, Suite 400
Buffalo, New York 14203
Tel. (716) 847-0650 ext. 262; fax 716-847-0227
TDD (716) 847-1322
Email: *jsheldon@nls.org*; web site: *www.nls.org*

July 2009

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I. Introduction

A. Purpose of this Handout

1. Assistive technology (AT) advocacy has traditionally focused on several key funding sources. Generally, the following five funding sources receive the greatest attention:

   a. Medicaid

   b. Medicare

   c. Special education programs

   d. State vocational rehabilitation agencies

   e. Private insurance plans

2. These "big five" funding sources may not meet an individual's specific AT funding needs for one or more reasons:

   a. The individual with a disability is either not eligible for the program or not eligible for a special benefit available through the program.

   b. Although the individual is eligible for the program and any special benefit categories within the program, the AT device sought is not covered by the program.

   c. The individual is eligible for the program (and any special program category) and the item in question is covered by the program. However, the individual has not demonstrated the "need" for the item under program criteria (i.e., medical necessity, educational necessity, vocational necessity, least costly alternative, etc.).

3. Where one of the big-five funding sources is not available or appears not to be available, this outline will help the AT advocate identify other potential ways to fund the AT device in question in one of four ways:

   a. By identifying a way to make the individual eligible for the program.

   b. By identifying another program that may fund the AT device.

c. By identifying a generally available funding strategy to pay for all or part of the AT device. Some examples might include:

(1) The use of anti-discrimination laws, like the Americans with Disabilities Act, or

(2) The use of tax provisions, like the Flexible Spending Account.

d. By identifying sources of charity, including:

(1) National charities,

(2) State and local charities,

(3) Individuals who may make donations to needy persons.

B. Using This Handout

1. Since this outline surveys many different sources of funding and funding strategies, none of the programs or strategies is covered in great detail.

2. Wherever possible, we provide citations to law, regulation, policy, web sites, or other documents that discuss the topic in greater detail.

3. Using this handout as a starting point, the AT advocate or person seeking the item may need to do further research and investigation to determine whether any of the ideas presented will work in their individual case.

C. How You Can Help Us

1. This document represents an attempt to identify, in one place, many of the "best-kept secrets" in the AT funding world.

2. It is based on the insights of our staff at the National AT Advocacy Project and on input we have received from many individuals in our national AT advocacy network.

3. If you can provide additional information about one of the funding sources or strategies discussed below, or if you can provide us with information about a funding source or strategy that we did not discuss, please contact the author by phone, fax, email, or mail (contact information is on the title page).

II. Ensuring Eligibility For The Traditional, Big-Five Funding Sources

We start with this strategy because your best bet is always to find a way to qualify for one of the big-five funding sources and then satisfy that funding source that you qualify for funding of the AT device in question. Based on our experience at the AT Advocacy Project, Medicaid continues to be the the most important AT funding source among the big five. It is also the one funding source that offers the most opportunity in terms of creative eligibility approaches. For three of the other big-five funding sources, however, we will offer at least one comment that could serve as the beginning of an AT funding strategy.

NOTE: If the individual is eligible for one of the big-five funding sources, but the AT device is still denied, an administrative appeal or even litigation may be in order. Strategies for pursuing those appeals will not be discussed in this outline.

A. Medicaid

1. For persons with disabilities, there are several paths to potential eligibility[1]:

a. Through receipt of SSI in 39 states, the District of Columbia, and the Northern Mariana Islands.[2]

b. Through the optional "medically needy" category, which allows an individual to spend down to the state's monthly

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[1]For a comprehensive discussion of this subject *see Medicaid and Persons with Disabilities: Special Medicaid Eligibility Provisions for Persons with Disabilities*. This training outline was used for an August 2006 webcast and is available through the National AT Advocacy Project. The Kaiser Family Foundation has a great link to the Medicaid websites and other state-specific information for all states. *See* www.statehealthfacts.org.

[2]The 11 states, known as section 209(b) states, which use their own eligibility criteria which differs from SSI eligibility criteria include: Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma, and Virginia. *See* 42 U.S.C. § 1396a(f); Social Security Program Operations Manual System (POMS) SI 0175.020.

income eligibility threshold if countable income is above that threshold.

c. Through an optional home and community-based services (HCBS) waiver.

d. As a child adopted pursuant to the federal Adoption Assistance Program. See section III.B, below.

e. Through a state's optional Medicaid Buy-In program for individuals who are working.

2. Establishing or maintaining SSI eligibility for the child of a working parent.

a. A parent may want to consider creative structuring or restructuring of a wage and benefit package to minimize deemed income (for SSI purposes) to a child under 18.

b. **Example.** Darlene Green is a widow with three minor children, Chris, age 11, Carey, age 13, and Jason, age 16.

(1) Jason has cerebral palsy and receives a monthly SSI check of $373 with automatic Medicaid.

(2) Medicaid has paid for prescription medications, therapy not covered by private insurance, a $10,000 power wheelchair that must be replaced soon, a $8,000 augmentative communication device, and the co-payment amounts required under the family's private insurance policy.

(3) Keeping Medicaid is critical!

(4) We assume that Jason lives in a state that pays the 2009 SSI Federal Benefit Rate of $674 with no state supplement and that provides automatic Medicaid eligibility to SSI recipients.

c. Jason's SSI amount is based on his mother's gross wages of $33,000 ($2,750 per month), working 60 percent time.

(1) Darlene's employer would like her to work more hours:

(a) either 80 percent time ($44,000 per year/$3,667 per month), or

(b) 90 percent time ($49,500 per year/$4,125 per month) or full-time ($55,000 per year/$4,583 per month).

(2) Darlene is willing to accept a reduction in Jason's SSI check, but cannot let go of the Medicaid. What should she do?

(3) NOTE: Darlene will continue to pay $350 per month toward a family health insurance policy with her employer paying the remaining $600 toward the $950 per month policy.

d. The monthly "break-even amount" (i.e., the amount of parental income at which Jason's SSI check is reduced to $0) is $3,495 per month ($41,940 per year) in 2009. At that amount of gross monthly wages, Jason will lose his SSI check and lose his automatic entitlement to Medicaid.

e. **Darlene can pursue one of four strategies:**

(1) Continue at 60 percent time. By taking this "safe" course of action, Jason will continue to get the same SSI check of $373 and automatic Medicaid.

(2) Accept the 80 percent time job if the employer will restructure her salary and benefit package: paying her $3,317 per month/$39,800 per year in wages (just below the monthly break-even amount for SSI) and reducing Darlene's family health contribution by $350 to $0 per month. Since the SSI program will only count wages and not employer-funded health insurance, this allows Jason to retain a reduced SSI check of $89 per month and automatic Medicaid.

(3) If the employer offers a flexible spending account pursuant to section 125 of the Internal Revenue Code (see below), she could accept the 80 percent time job and have $350 deducted each month and put into the flex account to pay toward health insurance premiums.

(a) This pre-tax deduction reduces the taxable income from $3,667 to $3,317 per month, reducing the the monthly income "deemed" by the SSI program to Jason as well. Jason will now be eligible for a $89 monthly SSI check and automatic Medicaid. See Social Security Program Operations Manual (POMS) SI 00820.102 (providing that pre-tax wages set aside in a flexible spending account, or what the SSI program refers to as a "cafeteria plan," will not be counted as income by the SSI program).

(b) Note that the result of the flex account contribution is the same as the previous example of the employer reducing the gross wage by the amount of the increased health insurance payment. With enough expenses to pass through the flex account and reduce gross wages, for IRS purposes, Darlene may be able to accept the 90 percent or even full-time position.[3] (See more detailed discussion on p. 18, below.)

(4) Wait until Jason's 18th birthday to accept additional hours and pay. At age 18, the SSI program will no longer consider any part of Darlene's income and resources as available to Jason. At that point, he will be eligible for a full SSI check and automatic Medicaid no matter how high his mother's salary is. Creative structuring, restructuring of parental wages and benefit package to minimize deemed income to the child under 18.

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[3]Many employer-sponsored flexible spending accounts, including the one offered by the author’s employer, will allow flex account money to pay for items not traditionally covered by health insurance including deductibles and co-payments, some over-the-counter medications, parking, a bus or subway pass, and child care expenses. Again, any money set aside to cover these expenses will not count as taxable income and will not be counted as income by the SSI program.

3. **Accessing the Optional Medicaid Buy-In program, if it exists in your state.**

a. The buy-in program is part of the Balanced Budget Act of 1997, as expanded by section 202 of the Ticket to Work and Work Incentives Improvement Act of 1999, 42 U.S.C. §§ 1396a(a)(10)(A)(ii) and 1396o.

(1) It allows a person who meets SSI's medical definition of disability to qualify for Medicaid even if the person has never received SSI and is currently earning a considerable annual wage.

(2) States can establish income limits between 250 and 450 percent of federal poverty guidelines, after deducting all applicable SSI exclusions from earned income (including the special 50 percent exclusion from earned income). This will allow persons with disabilities to receive Medicaid with wages exceeding $50,000 per year or, in states opting for the highest income thresholds, with wages in excess of $80,000.

b. The following 41 states had adopted and were implementing a buy-in program as of December 2008: Alaska, Arizona, Arkansas, California, Connecticut, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri (new program authorized on 7-2-07; previous program ended 8-28-05), Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma (section 1115a HIFA waiver), Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Additionally, Massachusetts is implementing a Medicaid waiver program very similar to the buy-in program. Montana's governor is expected to submit a buy-in bill to the state legislature in 2009. Source, "State Medicaid Buy-In Programs: Implementation Status and Enrollment Update," prepared by Allen Jensen, Work Incentives Project, George Washington University.

B. Medicare Savings Plans: Payment of Part B Premiums, Deductibles, Co-Insurance

1. Medicare is not usually viewed as comparable to Medicaid as an AT funding source. However, a wide range of AT devices can be funded through Medicare Part B's durable medical equipment (DME) provisions, including augmentative communication devices (classified by Medicare as "speech generating devices"). Also, since 2006, Medicare pays for prescription drugs through the Part D benefit.

2. Medicare Part B is optional and is subject to an $96.40 monthly premium in 2009 for most individuals. A person with a disability becomes eligible for Medicare, including the optional Parts B and D, after 24 months of entitlement to Social Security Disability Insurance (SSDI) benefits. An SSDI beneficiary with a diagnosis of ALS (i.e., Lou Gehrig's Disease), will be immediately eligible for Medicare, without a 24-month waiting period.

3. **QMB, SLMB, QI-1.** Three little-known programs allow your state's Medicaid program to pay the Part B premium if certain low-income criteria are met. These are commonly known as "Medicare Savings Programs":

   NOTE: The eligibility standards listed for each of these three programs are federal standards. A state may have more, but not less, generous standards. For example, New York has no asset limit for the QMB, SLMB or QI-1 programs.

   a. *Qualified Medicare Beneficiaries program (QMB).*

      (1) Requires every state to pay Medicare premiums, deductibles and coinsurance for disabled individuals who meet certain income and asset restrictions.

      (2) In order to be eligible for QMB, a person has to: be currently enrolled in the Medicare program; have gross monthly income at or below 100 percent of the federal poverty level ($903 per month in 2009); have assets at or below $4,000 for an individual and $6,000 for a couple).

   b. *Specified Low-Income Medicare Beneficiary program (SLMB).*

(1) Requires states to pay the Medicare Part B premium only.

(2) In order to be eligible for SLMB a person has to: be currently enrolled in the Medicare program; have gross monthly income between 100 and 120 percent of the federal poverty level (up to $1,083 per month in 2009); have assets at or below $4,000 for an individual and $6,000 for a couple.

c. *Qualified Individual Program (QI-1).*

(1) Requires states to pay the Medicare Part B premium only, within the limits of available funds.

(2) In order to be eligible for QI-1 a person has to: be currently enrolled in the Medicare program; have gross monthly income between 120 and 135 percent of the federal poverty level (up to $1,219 per month in 2009); have assets at or below $4,000 for an individual and $6,000 for a couple).

d. Since state Medicaid agencies are given leeway on how to count income and resources, the eligibility criteria will vary somewhat from state to state.

(1) Your best source of information on QMB, SLMB and QI-1 eligibility should be your state Medicaid agency's website, often by following a link for "Medicare Savings Plans."

(2) The Center for Medicare Advocacy's website, *www.medicareadvocacy.org*, contains a number of good resources on these Medicare Savings Plans.

e. An obvious benefit of each of these three programs is the payment of monthly Part B premiums.

(1) **Since QMB also pays for deductibles and co-insurance, the benefits for an AT user can be substantial.**

(2) For example, if Medicare funds a power wheelchair

based on a Medicare approved rate of $8,000, Medicare will pay for 80 percent of that amount ($6,400) and the individual will be responsible to the remaining 20 percent ($1,600).

(3) Typically, Medicaid would pay this 20 percent co-payment. If the person is not eligible for Medicaid (or chooses not to pay a spend down to receive it), the QMB program could pay this $1,600 co-payment.

f. A side benefit to establishing eligibility for QMB, SLMB, or QI-1, if the individual is not a Medicaid recipient, is that the person will then be classified as "dually eligible" (for Medicare and Medicaid) for Medicare Part D purposes, making the person eligible for the full low-income Part D subsidy benefit. This will dramatically limit the individual's out-of-pocket costs associated with the new Part D prescription drug program.

C. State Vocational Rehabilitation (VR) Agencies

1. Title I of the Federal Rehabilitation Act, 29 U.S.C. §§ 701 *et seq*., and its implementing regulations, 34 C.F.R. Part 361, allow state VR agencies to establish a financial needs test for the great majority of the services it funds, including the more expensive services like college tuition, rehabilitation technology, and AT. *See* 34 C.F.R. § 361.54(b).

2. Beneficiaries of either SSI or SSDI benefits automatically are held to meet any needs-based criteria established by the State VR agency. Stated another way, they are totally exempt from any financial needs test. *Id*. § 361.54(b)(3)(ii).

a. So long as the individual receives any amount of either SSI or SSDI benefits, he or she become eligible for all VR services without cost to the individual.

b. The income and resources of responsible relatives, including parents and spouses, are irrelevant to the VR agency's financial need determination if the individual is a recipient of either SSI or SSDI benefits.

c. Example: Ted had a good work record before he became disabled. He now receives $1,500 in SSDI benefits which is too much to qualify for SSI and well above his state's medically needy level of $750, requiring that he would have to pay a spend down of more than $700 to qualify for Medicaid.

Since Ted automatically meets his state VR agency's financial need criteria, based on his receipt of SSDI, he will qualify for any services (including AT) that are available through the agency.

3. In light of this linkage of SSI to financial eligibility for state VR agency services, all of the analysis in the Medicaid section (section II.A, above) and the discussion of creative family law settlements (see section IV.B, below) become relevant. Any steps that can be taken to obtain or preserve SSI eligibility will ensure that the individual automatically meets the financial needs test for AT and other services.

D. Private Insurance

1. Continuation coverage under COBRA

NOTE: As part of various "stimulus" initiatives issued by Congress during 2008 and 2009, there may be some short-term enhancements to the COBRA provisions for the recently unemployed. None of those provisions are specifically addressed in this handout.

a. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), 29 U.S.C. §§ 1161 *et seq*., applies to employers who customarily employed 20 or more employees on a typical business day in the preceding calendar year.

b. COBRA provides an option for continuing insurance coverage for employees and their dependents after a lay off or job termination.

(1) Under COBRA, the employee or dependent has a minimum of 60 days to elect continued coverage. *Id*. § 1165.

(2) The employee or dependent is generally entitled to continued coverage, at their own expense, for a

period of 18 months following the termination.

(3) The 18 months of continued coverage is extended to 29 months for individuals who are determined to be disabled under the SSDI or SSI programs when employment is terminated or when continuation coverage begins. To extend coverage to 29 months, the employee must provide notice of his or her disability before the 18 month continuation period expires. *Id*. § 1162(2)(A).

(4) COBRA limits the premium to 102 per cent of the group rate paid by the former employer and permits payment in monthly installments. *Id*. §§ 1162(3)(A) and (B). COBRA does not, however, apply to employees who are terminated as a result of gross misconduct. *Id*. § 1163(2).

c. COBRA protects individuals during the period they are between jobs or awaiting Medicare eligibility. It protects an employee's spouse and dependent children when they lose eligibility under the group health plan as a result of the employee's death, entitlement to Medicare, termination of employment or reduction of work hours. *Id*. §§ 1163, 1167(3). COBRA also protects a spouse in the event of divorce or legal separation and protects dependent children who lose their right to coverage as dependants because they get older or marry. *Id*. §§ 1163(3) & (5).

2. Continued coverage for young adult dependents with disabilities

a. A typical insurance policy will cover dependent children only through a certain age or until they complete college.

b. For example, one of the larger HMOs in New York covers dependent children until age 19 if they are no longer in school and will cover a college student through age 25.

c. Many of these policies may have special provisions to cover adult disabled children indefinitely.

(1) Check any relevant policy to see if this kind of provision exists.

(2) Also, check the policy for what it uses as a definition

of disability. The SSI/SSDI standard of disability will commonly appear as the standard.

d. If one of these provisions exists, there will be no need to pay extra money to continue coverage under the COBRA provisions.

III. Alternative and Little Known Programs for Funding AT

A. Equipment Loan Funds

1. Many states operate some kind of AT or equipment loan program, offering low-cost loans to persons with disabilities who meet the criteria of the program.

2. Alternative Financing Programs (AFPs) - most of the programs running the loan programs will be known as AFPs.

3. These programs have typically originated in one of two ways:

   a. Many of the newest programs have been funded as “alternative financing” programs under Title III of the AT Act. Currently, about 30 states receive funding in this manner. *See* RESNA website at: www.resnaprojects.org/AFTAP/state/RESNA.html.

   b. Many of the oldest programs were established with funds other than Title III funds. Currently, 11 states have programs established without Title III funding. See RESNA website at: www.resnaprojects.org/AFTAP/state/otherloans.html.

4. Typical way these programs operate:

   a. The loan program will offer one of three methods to deliver low-interest financing for AT: a revolving loan, a loan guarantee, or an interest buy down. Some programs will offer two of these methods, some all three.

   b. Dollar limits for loans. These will vary, typically between $10,000 and $30,000, with some programs having no set dollar limit.

   c. Interest rates will vary from a 0 percent rate to an 8 percent rate. Some offer interest rates below the federal prime lending rate.

d. The term for repayment is typically in a range of 5 to 7 years, but some programs offer a longer repayment period for home equity loans.

e. Credit worthiness issues: Although the loan programs will want to have reasonable assurance that loans will be repaid, unlike traditional lenders some loan programs will offer loans to individuals without a good credit rating.

5. The most common items purchased with loan funds:

a. Transportation-related, including vehicle modifications

b. Computers and costs associated with computer access

c. Mobility equipment, including wheelchairs and scooters

d. Equipment for daily living, such as environmental control units

e. Hearing aids, vision aids

6. Advocacy tips

a. Equipment loan funds should generally only be considered after an individual has exhausted other sources or no-cost or limited cost funding for AT devices.

b. An equipment loan fund can be an excellent way to pay for a variety of out-of-pocket costs related to purchase of AT, including:

(1) Amounts that exceed the payment limitations of a private insurance plan;

(2) The 20 percent co-payment required under the Medicare Part B program;

(3) Any share of cost requirement charged by a state vocational rehabilitation program;

(4) Any AT-related costs that exceed the amount

available for purchases under an SSI Plan for Achieving Self Support (PASS)[4]; and

(5) The amounts not otherwise covered by charity payments toward an AT device.

B. The Federal Adoption Assistance Program

1. Federally funded adoptions are governed by the federal Adoption Assistance and Child Welfare Act of 1980. 42 U.S.C. §§ 620-28, 670-676.

2. States are authorized to enter into adoption assistance agreements with parents "who adopt a child with special needs." *Id*. §§ 673(a)(1)(B), 675(3).

3. For children with disabilities, the child is held to meet the criteria as a child with special needs if the child meets all the eligibility requirements for SSI. *Id*. § 673(a)(2)(A)(ii).

    a. For such children, the state "may make adoption assistance payments to such [adoptive] parents directly through the State agency or through another public or nonprofit agency, in amounts to be determined." *Id*. § 673(a)(1)(B)(ii).

    b. These payments are commonly referred to as "adoption subsidy payments."

    c. States have leeway to make adoption assistance payments based on individual circumstances, but they cannot be higher than foster care payments would have been if the child had remained in or entered a foster home. *Id*. § 673(a)(3).

    d. In the case of adopted children with disabilities, states may continue the adoption assistance payments until the child is 21. *Id*. § 673(a)(4).

NOTE: The law specifically provides that a child with a disability will not be considered a child with special needs unless: (a) the state

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[4]For a discussion of how the PASS and an equipment loan fund can work well together see our Spring-Summer 2006 issue of the AT Advocate newsletter, available at: http://www.nls.org/av/spring-summer06.pdf.

has determined that the child cannot or should not return to the home of his or her natural parents; (b) the state has determined that because of the child's disability (or other special factors, such as ethnic background) it is reasonable to conclude that the child cannot be adopted without providing adoption assistance; and (c) a reasonable but unsuccessful effort has been made to place the child without providing adoption assistance or Medicaid. *Id*. § 673(c).

4. **Automatic Medicaid eligibility.** If the following criteria is met, the adopted child with a disability is automatically eligible for Medicaid [*Id*. § 673(b)(1)]:

    a. The child meets the criteria of "child with special needs" by meeting the eligibility requirements for SSI.

    b. There must be an adoption assistance agreement in effect, even if adoption assistance payments are not being made pursuant to that agreement.

5. **Automatic Medicaid Eligibility, at state option**

    a. States may choose to provide Medicaid coverage for children who are receiving benefits from state or local (non-federal) adoption assistance programs. 42 U.S.C. §§ 1396a(a)(10)(A)(ii), 1396d(a)(I).

6. Additional services to adoptive parents will vary from state to state.

    a. These may be available through one of two sources: the state Title 20 plan, a comprehensive social services plan describing services which are available to all adopted children; or through optional state adoption assistance benefits. This section will discuss the latter.

    b. The adoption assistance agreement is to include any additional services that are to be provided to the family or child. *Id*. § 675(3)(A).

    c. The federal law does not provide any federal funds for these additional services, but states may make additional benefits available with state or local funds.

        (1) Advocates will need to become familiar with what

special services are available under state law and policy.

(2) In Minnesota, for example, adopted children are entitled to a range of items that would be categorized as AT, including [*see* Minnesota's adoption subsidy rule 9560.0083]:

(a) Specialized communications equipment

(b) Ramps

(c) An accessible shower

(d) Elevated bathtubs and toilets

(e) Blinking lights and tactile alarms as alternate warning systems

(f) Lowered kitchen work surfaces

(g) Disability-related modifications to a vehicle

C. The Crime Victims Compensation Fund

1. This program, operated by each state through a federal grant, is authorized by the Victims of Crime Act of 1984 (VOCA), as amended, 42 U.S.C. § 10601. Final guidelines were published at 66 Fed. Reg. 27158 - 27166 (5/16/01).

2. The VOCA authorizes federal financial assistance to states (up to 40 percent reimbursement for approved expenditures) for the purposes of compensating and assisting crime victims, funding training and technical assistance, and serving victims of federal crimes.

3. For updated information on the crime victims program, see website of the federal Office for Victims of Crime (OVC), www.ojp.usdoj.gov/ovc/help/links.htm, and website of the National Association of Crime Victims Compensation Boards: *www.nacvcb.org*. For links to the websites of most of the state Crime Victims Boards, see: *www.nacvcb.org/statelinks.html.*

4. Compensable crimes. States must include crimes whose victims

suffer death or physical injury as result of:

(1) Terrorism

(2) Driving while intoxicated

(3) Domestic violence

(4) Intentional or attempted defacement of any religious real property because of: its religious character; or the race, color or ethnic characteristics of any individual associated with the religious property.

b. Compensable expenses.

(1) VOCA mandated expenses. At a minimum states must award compensation for a list of expenses when they are attributable to a physical injury resulting from a compensable crime. These include:

(a) Medical expenses, including eyeglasses and other corrective lenses, dental services, *prosthetic or other devices* (*see* 42 U.S.C. § 10602(d)(2))(no definition of "prosthetic and other devices" appears in the federal law or guidelines)

i) Since there is no definition of prosthetic and other devices in the federal Crime Victims law, you might urge your state to adopt your Medicaid agency's definitions for prosthetic device and durable medical equipment for use in this program (assuming you are reasonably happy with those definitions).

(b) Mental health counseling and care

(c) Lost wages

(d) Funeral expenses

(2) Optional allowable expenses. States may offer compensation for other types of expenses as

authorized by state law, regulation, or established policy.

(a) These include "[n]ecessary building modification and equipment to accommodate physical disabilities resulting from a compensable crime."[5] VOCA Guidelines, part IV.B.2.(b)(ii). (No definition for these terms appears in the federal law or guidelines.)

c. Payor of last resort. The federal guidelines provide that the compensation program is the payor of last resort "with regard to federal or federally financed programs." VOCA Guidelines, part IV.C.2.

5. AT advocates may need to forcefully advocate for AT, on behalf of crime victims, under either the mandated "prosthetic or other devices" clause or the optional "necessary building modification and equipment" clause.

a. A quick review of state websites suggests that many states do not even mention these two categories of compensation in its policies, application forms, or other literature describing the program.

b. Many of the state programs offer some specific appeals process if requested compensation benefits are denied.

6. According to the National Association of Crime Victims Compensation Boards website, the average maximum compensation per case, allowed by states, is about $25,000.

IV. Funding Strategies, Generally Available That Do Not Involve a Program That Funds AT In a Conventional Sense

A. The Flexible Spending Account Under Federal Tax Law

1. These accounts, known as "flex plans," "cafeteria plans," or "125 plans," are authorized by section 125 of the Internal Revenue

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[5]The Texas program allows up to $50,000 for eligible individuals and up to an additional $75,000 in the case of "catastrophic injuries resulting in a total and permanent disability" for such things as making a home accessible, job training, and vocational rehabilitation.

Code.

2. If an employer offers this alternative to its employees, the employee may designate a certain amount of pay that is then set aside, pre-tax, to cover items or expenses not otherwise covered by health insurance.

    a. These plans can be used to cover traditional medical costs such as health insurance premiums, co-payments on doctor visits and prescription drug purchases, AT-related purchases, and uncovered services such as chiropractic visits.

    b. It can also be used to cover expenses that have nothing to do with medical needs, such as dependent child care, adoption expenses, and parking fees.

3. Sample list of disability-related expenses, including AT-related expenses that can be deducted if paid by the employee[6]:

    a. Braille-books & magazines

    b. Chiropractors

    c. Co-insurance amount you pay

    d. Co-pay amount you pay

    e. Contact lenses & eyeglasses plus eye examination

    f. Cosmetic surgery medically necessary and recommended by Physician (restricted by IRS regulations)

    g. Cost of operations and related treatments

    h. Crutches

    i. Deductible medical coverage amounts you pay

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[6]The source of this list is a publication available on the website of P&A Administrative Services (no connection to Protection and Advocacy agencies), the administrator of the flex plan for Neighborhood Legal Services, the author's employer. See *www.padmin.com/forms/Flex%20Brochure.pdf*.

j. Dental fees

k. Prescription drugs

l. Medical supplies

m. Hearing devices & batteries

n. Home improvements motivated by medical considerations

o. Physician recommended swimming pool or spa equipment costs (is restricted by IRS regulations)

p. Telephone, special for deaf

q. Television audio display equipment for deaf

r. Wheelchair

4. Benefits to individuals who use the flexible spending plan.

   a. Through tax savings, an indirect subsidy toward the cost of necessary medical expenses, including expenses for AT devices. The actual tax savings will depend on the tax payer's tax bracket (or what is known as the marginal tax rate, i.e., the rate on the last dollar earned).

   b. By reducing countable income for IRS purposes, this will also work to the tax payer's advantage with many needs-based programs that use taxable income as their yardstick for eligibility.

5. **Example 1.** Let us return to Darlene Green and her son, Jason, who were first described on page 6. As described above, Ms. Green was able to pay her $350 per month share of family health insurance premiums through her flex plan. By doing so, she and her son were able to benefit in three ways:

   a. Her income taxes were reduced as her annual income was reduced by $4,200.

   b. Because the SSI program will not count this income when determining Jason's SSI eligibility, he remains eligible for SSI.

c. With the retention of SSI, Jason keeps Medicaid, providing a payment source for a range of items described earlier.

6. **Example 2.** Candida Perez is married to Juan who recently became disabled in a car accident. Juan uses a manual wheelchair for all mobility but could benefit from a power wheelchair. Juan is not eligible for SSDI benefits because he did not have a sufficient work history. He applied for SSI (his state would pay the 2009 federal benefit rate of $674 with no state supplement). He was denied SSI because of his wife's income.

   a. In Juan's situation, the SSI break-even amount for Candida's monthly gross earnings (the amount at which the deemed income would reduce his potential SSI check to $0) would be $2,107 per month in 2009. Candida earns just more than that amount, $2,157 gross per month and is being considered for a promotion next year.

   b. What can Candida do? After consulting her flex plan administrator, she starts a flexible spending account. In it, she has $300 per month deducted from her monthly paycheck: $150 for her share of health insurance; $100 for parking; and $50 to cover a range of co-payments and uninsured medical expenses. How has the flex plan helped Candida and Juan?

      (1) By reducing the family's taxable income by $300 per month ($3,600 per year), there will be a tax savings.

      (2) By reducing Candida's monthly gross income from $2,157 to $1,857, Juan goes from not being eligible for SSI to eligibility for a $125 monthly SSI check.

      (3) Juan is also now eligible for automatic Medicaid in his state. Medicaid will pay for prescription co-pays (his state covers that optional service), a power wheelchair he desperately needs, and any other services not covered by the private insurance plan.

      (4) Because he is now an SSI recipient, Juan will also be eligible for any needs-based assistance from his state VR agency without regard to the income of his spouse. The VR agency will pay for a number of expenses to allow Juan to pursue a vocational goal: tuition and other college expenses; a ramp to allow

Juan to get into and out of his home; and vehicle modifications if he can come up with the money to purchase a van.

B. Creative Structuring or Restructuring of a Child Support or Alimony Agreement to Obtain or Retain SSI and Medicaid[7]

1. The purpose of this strategy is twofold:

   a. To have disability-related and other needs met through the child support or alimony obligation without decreasing the SSI amount that would otherwise be due.

   b. Through obtaining or retaining eligibility for SSI, we ensure eligibility for Medicaid (in most states) providing a funding source for various medical expenses, including AT.

2. The underlying strategy is to avoid the direct payment of cash to or for the benefit of the SSI beneficiary.

   a. Any cash or in-kind contribution covering food or shelter will have the affect of reducing, or even eliminating SSI payments.

   b. By directing that payments from a parent or spouse be paid directly for items other than food or shelter, we ensure that those payments will not be counted as income to the SSI applicant or recipient.

      Note: When our original, *SSI and the Family Law Attorney* article was published in 1999, the SSI program's definition of income included cash or the in-kind equivalent of cash received in the form of "food, clothing or shelter." During 2005 the SSI program amended its regulations to delete "clothing" from the definition of income. See final regulations published on February 7, 2005 (effective March 5, 2005), 70 Federal Register 6340-6345, amending 20 C.F.R. § 416.1102.).

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[7]For a very extensive discussion of these issues see *Disability, Divorce, SSI, and Medicaid* (Sept. 2008), a part of our original Funding of AT manual series. Hard copies are available from the National AT Advocacy Project or can be obtained on our website: www.nls.org/av/DisabilityandDivorce.pdf.

3. **Example.** Let us return to the case involving Darlene Green and her son, Jason Green, who has cerebral palsy. Let us also assume that Ms. Green is working 80 percent time and earning $44,000 per year or $3,667 per month. Because $350 per month is set aside in a flexible spending account to pay for her share of health insurance premiums, her taxable income is $39,800 per year or $3,317 per month. As we noted above, at this rate of income (and with two other minor children) Jason's SSI check will be $89 (assuming his state pays the 2009 federal benefit rate of $674 per month). Without going through all the budgeting, the SSI program will consider (or "deem") $605 of Ms. Green's monthly wages as available to Jason. After $20 of that amount is disregarded, Jason's countable income is $585 and his SSI check will be $89 ($674 - 585).

   a. Assume that Jason's parents are about to get divorced and that Jason's father is prepared to pay $450 per month as child support for Jason. The SSI program will count two thirds of that amount ($300) which, combined with the income deemed to Jason from Ms. Green ($585), will give Jason countable monthly income of $885 per month, i.e., more than the SSI base rate of $674. The effect of this will be to make Jason ineligible for an SSI check and automatic Medicaid. Is there an alternative approach that would keep Jason eligible for SSI and Medicaid?

   b. The attorney representing Ms. Green learns that she has car payments of $200 per month and car insurance payments of $100 per month for a compact car. Jason is only able to travel in that car when two adults lift him into the front seat and put his folded manual wheelchair into the trunk. There is no way for Jason to travel in the car if he is using his power wheelchair.

   c. The attorney proposes and Mr. Green accepts an alternative to the $450 per month cash payment for child support. The father will, instead, send checks directly to vendors/creditors as follows:

      (1) $400 per month to a bank to pay directly on a vehicle loan, allowing Ms. Green to purchase a van that is specially modified for Jason to use in his wheelchair;

      (2) $50 to the car insurance company toward the cost of insurance that will now be $150 per month for the

more expensive van.

d. Upon the implementation of this alternative child support settlement, a number of things will happen:

(1) Jason will retain SSI at the same amount per month. This is because the payments from his father will not be counted as income by the SSI program because the money goes directly to the bank and insurance company and cannot be used to pay for his food or shelter.

(2) Jason will retain Medicaid, a source of payment for many items, including a power wheelchair and augmentative communication device.

(3) The family will be able to purchase a modified van that can now be used to transport Jason in his power wheelchair without the need for assistance from another adult.

(4) Ms. Green will actually come out $200 ahead in the family budget as she will no longer be responsible for any vehicle loan payment and Jason's father will pay for the increase in insurance.

C. Using the SSI Program’s Plan for Achieving Self Support (PASS) to Fund AT for Transition-Aged Youth [8]

1. The PASS provides for the exclusion of income that is set aside to purchase goods or services that will support a vocational goal. (Resources can also be excluded to support an approved PASS.)

2. With otherwise countable income excluded in this manner, the individual qualifies for an SSI check or an increase to an existing SSI payment.

3. Most PASS plans are written for adults.

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[8]For more information about the PASS, *see* Sheldon, J. & Lopez-Soto, E., *Plan for Achieving Self-Support: An SSI Work Incentive and Approach to Self-Directing Vocational Rehabilitation to Support a Range of Work Goals* (2009), available at Cornell University’s website at: www.ilr.cornell.edu/edi/nymakesworkpay/docs/MIG_PP_PASS.pdf.

a. The income going into the PASS is usually either unearned income, such as a Social Security check, or earned income, including wages from a job or net income from self employment.

b. Subject to approval by the Social Security Administration (SSA), the excluded income can be used to pay for a wide ranges of items needed to support a vocational goal, including: college expenses, a vehicle, a computer, and supplies to start a business.

4. A PASS can also be used for a child as young as 14.

a. The young person must have an identified vocational goal and must have a source of income (or a resource), that would ordinarily be counted by the SSI program, that can be excluded and used to support the vocational goal.

b. Sources of income could include Social Security dependant's benefits (on the record of a parent who is retired, disabled, or deceased), child support payments, or that part of a parent's income that is "deemed" available to the child.

5. **Example:** Using deemed income of a parent in a PASS

a. Let us return again to Jason Green and his mother, Darlene Green.

(1) Jason is 16 years old, has cerebral palsy, uses a power wheelchair, and receives a monthly SSI check of $89.

(2) Jason lives with his mother and two other minor children.

(3) Jason's mother earns $44,000 per year or $3,667 per month. Because $350 per month is set aside in a flexible spending account, her taxable income is reduced to $3,317 per month.

(4) Using its budgeting formula, the SSI program will consider (or "deem") $605 of Ms. Green's monthly wages as available to Jason. After $20 of that

amount is disregarded, Jason's countable income is $585 and his SSI check will be $89 ($674 - 585).

b. We learn the following additional facts about Jason:

(1) He is a high school sophomore, a good student, and plans to attend college to become a graphic designer.

(2) He has gone through a special driving evaluation that concluded he could drive a specially-modified van from his wheelchair.

(3) A new van that would be suitable for this use would cost about $23,000 and the modifications to it would cost about $28,000.

c. Jason, with the support of a benefits specialist from his local Work Incentives Planning and Assistance (WIPA) project, prepares a written PASS proposal and submits it on June 1, 2009.

(1) His vocational goal is to be a graphic designer and he will attend one of two regional colleges to pursue the goal.

(2) He will use the PASS to save the $585 per month of countable deemed income toward the purchase of a $23,000 van.

(3) He requests that the PASS be approved, retroactively, to January 2008 when he was 14 years old and four months shy of his 15th birthday. January 2008 was when Jason first began attending a computer club in high school and researched the job prospects for graphics designers.[9]

(4) He also requests that his PASS continue for 41 months, i.e., from January 2008 through May 2011 when he will turn 18 and the deeming of his mother's income will stop.

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[9]Under SSI's policy, a PASS can be approved for up to 24 months retroactively so long as the individual was eligible for SSI retroactively and had begun taking steps consistent with the long-range vocational goal. POMS SI 00870.007 B.4.

d. Jason's PASS is approved as submitted. This allows Jason to accomplish the following:

(1) He is able to set aside nearly $24,000, by saving $585 per month (i.e., his mother's deemed income) for 41 months.[10]

(2) Because the $585 of deemed income is now excluded, Jason's countable income for SSI purposes is reduced to $0 per month and his monthly SSI check increases to $674.

(3) The savings allows Jason to purchase the new van outright (purchase price plus sales tax) when he turns 18 and his PASS ends.

(4) His state vocational rehabilitation agency will then pay for the $28,000 worth of modifications so that Jason can drive the van from his wheelchair.

(5) Although $585 from his mother's earnings is put aside each month, since Jason's SSI check increases by $585 to $674 per month, the family retains the same amount of money per month for living expenses.

V. Identifying Charities That Are Potentially Available to Fund AT

This should be viewed as the most fluid of all the strategies discussed in this outline, as charities can change their mission, change their AT funding criteria, or even decide to fund AT for the first time without any need for approval from any legislative or policy-making body. AT advocates should become familiar with national, statewide, and local charities. The internet can be a valuable resource for finding a wide range of charitable organizations. The author invites readers to send in any national charities they are aware of that can be used to fund AT.

A Final Note to Readers: This outline has been edited several times since first drafted for a training a few years ago. As I learn of new programs or strategies for obtaining AT, this document will be further expanded. If you have suggestions for additional programs/strategies that can be added, please forward them to me at: jsheldon@nls.org.

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[10] In reality, since both the SSI rates and his mother's wages may change over the life of the PASS, the amount put into it each month, in a real case, could be expected to vary.