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POVERTY, EMPLOYMENT, AND DISABILITY

By Alexander Wohl

At a time when many U.S. policymakers increasingly are focused on the issue of poverty and economic disparity as an important and neglected social problem, a particularly striking set of statistics is one often ignored: the disproportionately high level of poverty among Americans with disabilities. It is just the latest outgrowth of a long history of exploitation, neglect, discrimination, and segregation.

Persons with disabilities experience the highest rates of poverty of any subcategory of Americans charted by the Census Bureau. Of the nearly 30 million individuals with disabilities ages 18 to 64, 27 percent, or more than 4 million people, live in poverty. This is more than double the rate of 12.5 percent for the entire population.

Although these numbers are revealing, they do not tell us much about the causes and effects of this economic disparity, particularly those involving the relationship of poverty to underemployment of individuals with disabilities; the inadequate and often regressive role of government programs intended to provide support and assistance, including health care; and the underlying history of discrimination experienced by people with disabilities that has prolonged and exacerbated these problems.

The disability rights movement. The first significant law that provided assistance to people with disabilities was a 1950 amendment to the Social Security Act called Aid to the Permanently and Totally Disabled, a title that reflected

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the prevailing view that those with the most significant disabilities would never contribute to society in any meaningful way. That law laid the groundwork for the creation in 1956 of Social Security Disability Insurance, which was followed by several other important laws.

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Overlapping this increase in federal support was the growth of the independent living movement, out of which developed a broader disability rights movement. This activity helped lay the groundwork for the Americans with Disabilities Act (ADA), which had the goal of ensuring full participation in society for people with disabilities by facilitating equal opportunity, independent living, and economic self-sufficiency.

While that law has led to increases in both accessibility and public awareness, its full promise has yet to be realized.

Businesses and others sought to undermine the law by suggesting it would be too costly and burdensome. And many federal courts, including the Supreme Court, interpreted narrowly a number of the law's provisions. Additionally, the law focuses on physical rather than intellectual disability and does not address many of the underlying causes of poverty.

Economic discrimination. One notable exception to the trend of courts limiting recovery of plaintiffs under the ADA or reading the law narrowly was the Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), in which the Court addressed the law's integration mandate and held that unjustified isolation and segregation of people with disabilities is discrimination and goes against the ADA's goal of ensuring "equality of opportunity, full participation, independent living, and economic self-sufficiency."

Most people understand that some employers will not hire a person because of characteristics such as race or sex — and that these decisions are illegal. But decisions not to hire persons with disabilities can involve more subtle means of discrimination, based on arguments that include the assertion that someone cannot do a job, that the hiring would require extra expenses as a result of the need to provide accommodations for that employee, or, in the case of employers who provide health insurance, that it would increase their insurance rates. Not only are these considerations illegal, they are also exacerbated by false presumptions of incompetence based on low expectations.

The bigger barrier to economic equality and independence faced by people with disabilities is the complex and often counterproductive matrix of laws and government programs intended to provide support and assistance. These

supports generally fail to deliver a level of benefits adequate to alleviate poverty and have a regressive design that discourages and even punishes efforts to work, trapping these individuals in a lifelong cycle of hardship.

In 1972 Congress created Supplemental Security Income (SSI) to help the elderly and individuals with disabilities with “little or no income” and provide them “cash to meet basic needs for food, clothing, and shelter.” The program acts as a gateway to Medicaid, which provides critical health care for low-income people, including those with disabilities. It also provides long-term supports and services for people who have trouble finding typical employment.

But there are a number of significant problems with these programs. States have limited allocations, so the wait to get Medicaid through SSI can be several years. Additionally, SSI participants are prohibited from making or having too much money from what is called substantial gainful activity. There is also a total asset limitation under SSI of \$2,000, meaning participants are prohibited from accumulating savings of cash, stocks, or other assets in excess of that amount. This limit has not been raised since 1989. Finally, a number of the employment programs administered by state agencies and contracted to disability service providers reinforce dependence rather than supporting independence by paying artificially low, often subminimum wages.

A potential for change. Not surprisingly, efforts to change these government programs face enormous obstacles. It is never easy to alter federal funding streams, even less so in an age of extreme congressional partisanship and ineffectiveness. Add to this the disparity in power and resources between those

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individuals and families who advocate for greater integration and the service and community rehabilitation provider industry that uses profits from the current system to seek its preservation.

But there are some promising efforts to help eliminate the poverty and dependence that ensnares many with disabilities. In a rare instance of bipartisanship, Congress recently passed and the president signed the ABLE Act. This law creates a tax-free savings vehicle as a new subsection of section 529, the college savings program, which would allow individuals and families to save up to \$100,000 to cover expenses that Medicaid does not without fear of losing life-sustaining benefits.

There also has been progress at the federal level and in individual states to rebalance the Medicaid reimbursable rate structure. This would help make community-based, integrated, supported employment more profitable than subminimum-wage, segregated work, now the primary service option through the

network of sheltered work providers.

And there continues to be progress on the legal front. With the backing of the U.S. Department of Justice, advocates have used *Olmstead* to mount successful attacks on unjustified confinement in a number of state institutions and have also expanded this to protect “the civil rights of individuals with disabilities who are unnecessarily segregated in sheltered workshops and facility-based day programs.” See, e.g., *United States v. Rhode Island*, Docket No. 1:14-cv-00175 (D.R.I. 2014).

Ultimately, the ability of the disability rights movement to ensure that people with disabilities have the civil and economic protections enjoyed by every other American will depend on several factors: additional legal victories, increased political power, and greater focus by those who have supported other civil rights movements. Only with this combination will the ability to inform and educate the public change the paradigm of how society views and treats people with disabilities. ■