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001. fax	Garry Mauro to Chris Jennings re: phone number (partial) (1 page)	n.d.	P6/b(6)

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Domestic Policy Council
Devorah Adler
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Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
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P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

WINSTON & STRAWN

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Fax Cover Sheet

Fax Number: 202-371-5950

FROM: BERYL F. ANTHONY, JR.

DATE: Wednesday, October 27, 1999 2:36:32 PM

CLIENT/MATTER: 102642.2

Please Deliver as Soon as Possible To:

RECIPIENT: Chris Jennings
COMPANY: The White House
FAX NO.: 456-5557
PHONE NO.:

Total number of pages including this page: 08

COMMENTS:
Chris --

Thanks so much for taking the time this evening to discuss our serious concerns with the proposed "user fee" (excise tax) to be imposed against attorneys who undertake the difficult representation of the disabled indigent. I am attaching several materials that make the case even more emphatically than I did. The underlying bill is very important, and should be paid for with an offset that doesn't hurt the disabled -- such as that proposed by Rep. Matsui at the Ways & Means markup. I am certain that the Administration can weigh to influence the conferees to correct this injustice and help the disabled return to work with their medical needs insured without jeopardizing their ability to retain the legal counsel so critical at the beginning of their rehabilitation. I look forward to hearing from you on whatever else I might do to assist you in this effort.

Beryl

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL OUR FAX OPERATOR AS SOON AS POSSIBLE. THANK YOU. 202-216-8669

WORK INCENTIVES BILL WOULD BE HARMED BY "USER FEE"

Reliance on a "user fee" assessed on attorneys' fees in Social Security cases to fund the important work incentives bill is very poor policy. It would hurt many of the very people that the work incentives legislation is designed to help. The Administration's proposed "user fee" should not be used as a funding mechanism for this bill.

Is Legal Representation Important?

Unfortunately, it is clear that Social Security's disability determination system has become far too complex for many claimants and their families to successfully navigate on their own. Those claimants whose applications are denied at the initial level find a daunting and often bewildering task before them as they begin the hearings and appeals process (which can go all the way into the federal courts) to obtain the benefits to which they are entitled.

SSA's own statistics are that represented claimants fare considerably better at administrative hearings than do unrepresented claimants. (In 1998, 57.6% of claimants represented by an attorney were awarded benefits at the hearing level, in contrast with 35.7% of claimants without an attorney.) It is certainly understandable that many claimants choose to hire knowledgeable lawyers to fight for their cash benefits and Medicare coverage.

What Is The "User Fee"?

By law, the Social Security Administration withholds 25% of past-due benefits of a successful claimant who is represented by an attorney. The Social Security Administration sets the amount of the attorney's fee. The law then requires SSA to pay the authorized fee from the claimants' past-due benefits directly to the attorney. This has been a fixture of the law since 1965, as a means to ensure the availability of attorneys for claimants who want to have legal representation.

The proposed user fee would be assessed whenever SSA performs this withholding and direct payment. Although called a "user fee," it is in fact a tax. It would be calculated as 6.3% of the amount of the attorney's fee. Since the cost for the agency to write the attorney's check is the same in every instance, regardless of the amount of the check, it is impossible to characterize this proposal as anything other than a tax.

What Would Be The Impact Of This "User Fee"?

State ethics rules in many states prohibit attorneys from paying expenses in cases without an understanding that the client is ultimately responsible for payment of all expenses. In these states, it appears that the client would be responsible for payment of this "user fee."

In other states, the attorneys would be responsible for paying the fees, thus reducing the amount of their already regulated fees. Imposition of this tax may well drive attorneys away from this practice; many do maintain that this is SSA's real goal. The result will be that people with disabilities could find themselves unable to obtain knowledgeable representation. With so much on the line for these workers and their families, this outcome is simply unacceptable.

10/6/99

CONSORTIUM for CITIZENS with DISABILITIES

October 15, 1999

The Honorable J. Dennis Hastert
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Hastert:

The undersigned member organizations of the Consortium for Citizens with Disabilities Task Forces on Social Security and Employment and Training are pleased to see work incentives legislation on the verge of passage on the House floor.

We appreciate all of the work that you and the Members of the Ways and Means and Commerce Committees have put into resolving numerous issues that have arisen in the legislation. However, as the legislation is addressed by the Rules Committee and prepared for a floor vote, we believe that it is imperative that several issues be resolved. **Specifically, we urge you to ensure:**

- **Inclusion of the Medicaid provisions as marked-up by the Commerce Committee, particularly inclusion of funding for the demonstration and state grant programs as mandatory funding, rather than discretionary funding.** The discretionary funding approach for Medicaid programs is unacceptable because it will make the provisions ineffective.

- **Inclusion of pay-fors for the entire bill that are acceptable to people with disabilities.** Currently, the attorneys' fees provision and the current draft of the Medicaid/education services provisions are unacceptable because they will harm people with disabilities.

All parties to this effort – the President, the House of Representatives, and the Senate – must come together to enact legislation that fulfills the promise of the Work Incentives Improvement Act and does not harm those people with disabilities whom the bill is designed to assist. We can only support a final bill that resolves the above issues.

We pledge to continue to work with you to resolve these important issues so that people with disabilities will have barriers to work removed. We hope to be able to join with you, the Senate, and the President in celebrating enactment of a bill that truly works for people with disabilities.

Sincerely,

Marty Ford

Marty Ford
The Arc of the US

Tony Young
UCPA

Paul Seifert
IAPSRS

Co-Chairs, CCD Task Force on Social Security

cc: Chairman David Dreier
Chairman Bill Archer
Chairman Tom Bliley
Ranking Member Joe Moakley
Ranking Member Charles Rangel
Ranking Member John Dingell

On behalf of: (UPDATED LIST)

AIDS Action
Alliance for Rehabilitation Counseling (NRCA/ARCA)
American Network of Community Options and Resources
Children and Adults with Attention Deficit/Hyperactivity Disorder
Easter Seals
Epilepsy Foundation
Human Rights Campaign
International Association of Psychosocial Rehabilitation Services
National Association of Developmental Disabilities Councils
National Association of People with AIDS
National Association of Protection and Advocacy Systems
National Parent Network on Disabilities
NISH
Paralyzed Veterans of America
The Arc of the United States
United Cerebral Palsy Associations

CONSORTIUM for CITIZENS with DISABILITIES

Problems with Administration's Proposed User Fee for Successful Social Security Claimants

To impose a 6.3 percent fee on payments to attorneys is wrong for the following reasons:

- When someone successfully appeals an SSDI denial and receives an award of back benefits, that decision essentially means that the individual is eligible and that the Social Security Administration should have awarded those benefits. Applying a fee against that award is essentially penalizing the claimant for demonstrating that SSA was wrong.

- The attorneys' fees payment system was put into the Title II program as a way of ensuring that claimants have adequate representation during the progress of their cases. Since Title II benefits cannot, by law, be attached, an attorney cannot collect a fee from a successful client if the client has only Social Security income and refuses to pay. Ensuring that the attorneys get paid helps ensure that there is a pool of private attorneys who are willing and have the expertise to pursue claimants cases.

- Someone who applies for SSDI and is eventually awarded benefits has had the requisite FICA taxes paid into the Social Security system and thereby is entitled to the Social Security benefit. The administrative costs for establishing eligibility should be paid by the system, not the beneficiary. SSA's duties in approving the attorneys' fees and in sending checks in the appropriate amounts to the claimant and to the attorney should be seen as part of the administrative costs of the system, particularly since claimants view these cases as necessary because SSA's system has failed to award eligibility where appropriate.

- State legal ethics rules may forbid attorneys from paying client expenses, in which case a Social Security claimant may have to be responsible for this additional fee. This penalizes the claimant, not the lawyer.

- The longer an appeal lasts, the greater may be the back benefits awarded and the higher will be the fee assessed against the claimant's representative. This could dampen the enthusiasm of lawyers to take complicated cases that might take a long time to adjudicate.

- This proposal by the administration has been largely rejected by some Members of Congress as a "tax" and by others as an improper fee on beneficiaries. Why bring out a tired retread of an idea that is not viewed favorably by many in Congress, is opposed by the disability community, and hurts the very people that the work incentives bill is trying to help?

October 13, 1999
Social Security Task Force

1730 K Street NW, Suite 1212 • Washington, DC 20006 • PH 202-785-3388 • FAX 467-4179 • CCD@radix.net • www.c-c-d.org

Federal Bar Association

October 14, 1999

The Honorable Bill Archer
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515-4315

The Honorable Charles B. Rangel
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515-4315

Dear Gentlemen:

I am writing on behalf of the Federal Bar Association to express our opposition to efforts to fund H.R. 3070, the "Ticket to Work and Work Incentives Improvement Act of 1999," with funds derived in part from "user fees" assessed on attorney fees in Social Security Disability Insurance and Supplemental Security income disability cases.

Under the terms of the bill, a "user fee" would be imposed when the Social Security Administration has approved and certified direct fee payment to attorneys (from past-due benefits payable to beneficiaries) for their representation of claimants. The proposed fee would be computed at a rate of 6.3% of the fee paid to attorneys who use the statutory witholding and direct fee payment mechanism. The user fee correlates to the Social Security Administration's alleged costs in administering the attorney fee witholding and payment mechanism.

The Federal Bar Association has opposed the assessment of user fees on Social Security attorney fees since 1998, when the White House first proposed their use in connection with its fiscal year 1999 budget proposal. The FBA on April 15, 1998, through action by its National Council, adopted a resolution in opposition to the assessment of user fees in Social Security and SSI cases, recognizing that user fees are "likely to severely and adversely impact the ability of claimants to obtain legal representation." A copy of the underlying FBA resolution is attached.

Page Two

The membership of the Federal Bar Association includes attorneys involved in the public and private sectors of Social Security disability adjudication, including claimant representatives, administrative law judges, SSA staff attorneys, U.S. Magistrate Judges, District Court Judges and Circuit Court Judges. It is their considered judgment that the imposition of user fees will ultimately harm the interests of Social Security claimants, not help them. They are likely to have a chilling effect on attorney representation and to discourage attorneys from representing claimants in these matters. These fees are likely to drive attorneys out of this area of practice, leaving claimants without competent representation in these cases, which are of crucial importance to claimants and their families. The capacity of many attorneys to provide *pro bono* representation, such as to disabled children in SSI cases, also will be severely diminished.

I call upon you to oppose the inclusion of any provision in HR 3070 which would establish user fees assessed on attorney fees in SSI and SS disability cases. Thank you for your consideration of our views.

Sincerely,

Jackie A. Goff

Jackie A. Goff
National President

cc: Rep. E. Clay Shaw, Jr.
Rep. Robert T. Matsui

Att.

NATIONAL ORGANIZATION OF
SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES
(NOSSCR)
6 PROSPECT STREET
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NANCY G. SHOR
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DIRECTOR, GOVERNMENT AFFAIRS

(201) 444-1415
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October 20, 1999

Work Incentives Bill: Opposing the User Fee

The Work Incentives Improvement Act of 1999, passed by the House of Representatives on October 19, contains a 6.3 percent tax to be assessed against attorneys who represent Social Security claimants. The Senate's version of the Work Incentives Improvement Act (S. 331) contains no such provision.

On behalf of the 3,500 members of the National Organization of Social Security Claimants' Representatives, we urge your opposition to this user fee, and your support for including an available alternate Medicare offset as a revenue source for the Work Incentives Improvement Act. This Medicare partial hospitalization offset is the Matsui-Stark amendment that was offered during the Ways and Means Committee's deliberation. By substituting this revenue source for the user fee, the work incentives bill remains fully funded.

By law, the Social Security Administration withholds 25% of past-due benefits for a successful claimant who is represented by an attorney. The law then requires SSA to determine and pay the authorized fee from the claimant's past-due benefits directly to the attorney. This has been a fixture of the law since 1965, and serves as a means to ensure the availability of attorneys for claimants who want to have legal representation. The proposed 6.3 percent assessment would be withheld from the attorney's fee each time SSA cuts a statutorily mandated check. Since the cost for the agency to write these checks is the same in every instance, regardless of the amount of the check, it is impossible to characterize this proposal as anything other than a tax.

If imposed, the 6.3 percent tax will ultimately hurt the very people with disabilities whom the Work Incentives legislation is designed to help. It will have a definite chilling effect on the ability of claimants to retain legal representation. These cases are often very time-consuming and never very lucrative. By decreasing attorneys' fees by 6.3 percent, fewer attorneys will be willing to take these cases.

For these reasons, we join the Consortium of Citizens with Disabilities (copy attached) in opposing the user fee. Imposition of this tax may well drive attorneys away from this practice, an outcome that many maintain is SSA's real goal. Tragically, the result will be that people with disabilities could find themselves unable to obtain knowledgeable representation when they need it most. If this Congress is going to raise taxes at all, it is simply unacceptable that it be done in a way that harms those with so much on the line.

GOVERNMENT AFFAIRS OFFICE: 1101 14th Street, N.W., Suite 400, Washington, D.C. 20005 • (202) 216-0030 • Fax (202) 216-0031

SENATOR BLANCHE LINCOLN

State of Arkansas

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Fax: 202-228-1371
Little Rock Office
Phone: 501-375-2993
Fax: 501-375-7064
1-800-352-9364 (In-State)

DATE: 10/26/99

FAX TO: Chris JENNINGS

OFFICE:

FAX NUMBER: 456-5557 DIRECT DIAL:

FROM: Mac Campbell

SUBJECT:

NUMBER OF PAGES 2 (including cover sheet)

MEMORANDUM TO CHRIS JENNINGS
From: Mac Campbell
Date: October 26, 1999
RE: ALTERNATIVES FOR A 6.3% "USER FEE"

I appreciate your taking the time to speak with me this morning. Thank you in advance for regarding Senator Lincoln's opinions. For purposes of brevity I have attached only two points. By the way, I have been told that your Elaine-made cupcakes will be baking by mid-week.

The "Partial Hospitalization" pay-for:

The Democrats I have spoken with on the Senate side have told me they support the position of Rep. Matsui and the Ways and Means Democrats. The Democrats on Ways and Means offered a "Partial Hospitalization" pay-for that would actually score higher than the lawyer tax. From what I understand, the "Partial Hospitalization" pay-for is a fraud elimination and would be much less controversial than an arbitrary percentage fee on legal representation.

This "Partial Hospitalization" fraud slayer was included in the White House budget and is, in fact, non-controversial. Further, Rep. Thomas is apparently planning to use it to pay for one of his initiatives if it is available at the time. I see no reason to give it to him. Why should Congressional Democrats have to labor with the controversial pay-for on a popular bill when the cakewalk pay-for is there for the taking? Using the "Partial Hospitalization" pay-for is the position of the House Ways and Means Democrats and the position of the Democratic offices I have spoken with in the Senate. In short, if the bill stands with the "user fee," we are acting to the needless peril of traditionally Democratic constituencies, and we are going to hear about it.

If we must have a fee:

Using a non-variable fee (ex. $20 each) rather than a percentage would be less arbitrary, and would comport with the SSA's goal of paying for the bureaucratic costs of the withholding process. It doesn't follow that a $2000 check processed by the SSA costs $126 to draft and mail but that a $500 check only costs $31.50.

Further, if withholding was expanded to SSI, it would allow greater legal access to the less fortunate, and would expand the base for any new fees. Surely this would greatly increase the OMB score. Several attorneys I have spoken with have told me they frequently never see any money when they do SSI work. One gentleman in particular didn't blame the destitute people for leaving their lawyers out of the circle. He thought it was "irresponsible" not to streamline the working withholding system for Title II disability and expand it to SSI. Many attorneys wholly avoid SSI work because they know they won't get paid. Lawyers, like government workers, can't and shouldn't have to work for free.

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Garry Mauro

FACSIMILE TRANSMITTAL SHEET

TO: Chris Jennings	FROM: Garry Mauro
COMPANY:	DATE:
FAX NUMBER: 202 456-5557	TOTAL NO. OF PAGES INCLUDING COVER: 2
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NOTES/COMMENTS:

I'll get you the numbers on our success rate for enrolling those kids in Texas that are ~~[illegible]~~ I.D.'d!

[CLICK HERE AND TYPE RETURN ADDRESS]

P.O. Box 13083 Austin, Texas 78711
Phone [redacted] P6/(b)(6) GMauro8626@aol.com

[001]

CHILDREN AT RISK:
School-Based Health Care Services For Poor Children Funding In Jeopardy

One of the most significant problems in providing health care to our nation's poor and medically needy children is identifying them and placing them in public programs where medical services can be appropriately delivered. The President has also emphasized that there are an estimated 3 million children in the U.S. who are Medicaid eligible, but who are not receiving medical services when he recently announced his new Medicaid outreach initiative for children.

Over the past several years, school districts in 35 states participate in the Medicaid program as part of either the school based health service initiative or the school administrative outreach program. States such as Texas, New York, Illinois, Michigan, Florida, and Texas have worked with their state Medicaid agency and the Health Care Financing Administration (HCFA) to implement very successful programs.

The Work Incentives Improvement Act of 1999 (HR 1180) passed the House of Representatives on October 19, 1999. Section 407 of this bill will in effect, substantially eliminate the participation of schools in the Medicaid program.

The provisions contained in section 407 upon enactment will:

1. Invalidate virtually every existing claims processing contract with consequent massive disruption in school finances;

2. Jeopardize existing programs which have been in operation for up to four years in numerous states;

3. Terminate in any meaningful way the billing to Medicaid of special education transportation service; and

4. Impose onerous requirements that will make it impossible for schools to provide school based medical services for those children who are managed care enrollees.

The provision in question has been estimated to generate an average annual savings of $14 million ($70 million over five years). This level of savings is minimal. In addition, the spirit of section 407 is wholly inconsistent with the Clinton Administration's policy towards children.

Given the widespread devastating consequence of these provisions in H.R. 1180 (Section 407), these sections should be dropped from the bill.

WINSTON & STRAWN

Fax Cover Sheet

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Fax Number: 202-371-5950

FROM: GREGORY K. SMITH
DATE: Tuesday, October 26, 1999 3:33:32 PM

CLIENT/MATTER: 102642.2

Please Deliver as Soon as Possible To:

RECIPIENT: Chris Jennings
COMPANY: White House Office of Policy Development
FAX NO.: 4565557
PHONE NO.:

Total number of pages including this page: 04

COMMENTS:
Beryl Anthony asked me to forward the attached document to you. It contains a side-by-side critique of the excise tax on attorneys in the House version of the Work Incentives Bill (HR 1180), and our suggested alternative. Please call either Beryl or myself (371-5954) if you have any questions. Greg Smith

59136

we are looking for alternatives on this issue - we need to have options & funding - sent it to Barbara & wdr reporting, all we have to stand by our policy.

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL OUR FAX OPERATOR AS SOON AS POSSIBLE.
THANK YOU.
202-216-8669

EXCISE TAX ON SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES MUST BE REMOVED FROM THE WORK INCENTIVES BILL (H.R. 1180)

Section 406 of the Work Incentives Improvement Act of 1999 (H.R. 1180, passed by the House of Representatives 10/19/99), seeks to raise revenue by imposing a 6.3 percent excise tax on the fees of attorneys who represent Social Security claimants. According to the Social Security Administration, this so-called "user fee" is needed to offset the cost to SSA of paying claimants' representatives under the withholding and direct payment mechanism that was mandated by Congress in 1965. Advocacy groups for the disabled community have opposed this fee because it will serve as a disincentive for attorneys to take disability cases, leaving claimants – many of whom are physically or mentally incapable of representing themselves -- to navigate an extraordinarily complex bureaucratic system on their own. Because the 6.3 percent "assessment" is flawed public policy for a number of other reasons, an alternate proposal – aimed at addressing the myriad problems with the current system – is outlined below.

H.R. 1180	Comments
User Fee - SSA will impose a 6.3 percent assessment against any attorney's fee withheld and paid from claimant's past due benefits. (§406(a))	The 6.3 percent rate bears no relationship to the actual cost of writing a check. SSA has never given an accounting of these costs, and the numbers on its advocacy document for the bill do not add up. According to SSA's 1997 figures, the 6.3 percent tax will raise $30.8 million per year – nearly $11 million more than SSA's supposed $20 million per year cost for writing checks. Furthermore, the cost for SSA to write a check does not change based on the amount of the check, and a percentage-based "assessment" is wholly inappropriate.

Alternative	Comments
Joint Check - Make checks for past due benefits payable to both the claimant and the attorney of record, who then split the proceeds as directed by statute.	This eliminates bureaucratic surplusage – instead of writing two checks, SSA need write only one.
Processing Fee - Attorneys who use the withholding and direct payment mechanism must pay a processing fee of $25 per check.	Recognizing that some legitimate processing costs may remain after consolidating the two checks into one, this fee is pegged at the actual cost – not a percentage that has no basis in reality.
Performance criteria - The $25 processing fee only will be imposed if the SSA delivers the benefits/fee check within 45 days.	If attorneys are going to pay for a service, it is only fair that that service be adequate. Currently, SSA routinely takes more than a year to pay past benefits and fees. This provision will incentivize SSA to operate more efficiently, and will benefit the claimants as well.

H.R. 1180	Comments	Alternative	Comments
Amount - After calendar year 2000, Commissioner can adjust 6.3 percent rate to whatever rate he deems appropriate. (§ 406(a))	This gives the Commissioner breathtakingly broad authority -- without any type of review – to unilaterally raise this tax, and thus to remove attorneys from the Social Security system.	Delete.	
Prohibition - Assessment cannot be directly or indirectly paid by claimant. (§406(a))	Ethics rules in several states prevent an attorney from paying any litigation fees for a client. In those states, attorneys will be faced with a Hobson's choice -- whether to comply with their ethical canons and secure reimbursement of the fee from the claimant (and thereby violate this law), or to not accept Social Security clients at all.	Delete.	
		Extend to SSI - The withholding and direct payment mechanism will be expanded such that it is available for supplemental security income (SSI) claims as well as disability claims.	Currently, the withholding and direct payment mechanism only applies to disability (Title II) claims. By expanding this system to include SSI claims, Congress will streamline SSA's various fee programs, expand the access of SSI claimants to representation and generate more processing fee revenue.
		Raise Fee Cap - Institute an automatic inflation adjustment for the statutory fee cap that is tied to the automatic adjustments made periodically for Social Security beneficiaries.	Because the fee cap has not been adjusted since 1991, more and more attorneys are forsaking the fee agreement process in favor of the time-consuming, labor-intensive fee petition process. By adjusting the cap for inflation (which would move the cap from $4,000 to approximately $4,900 in current dollars), more attorneys will use the simplified fee agreement system, thereby maximizing efficiency.

As is obvious from this outline, this issue is very complex and will have severe consequences on the ability of Social Security claimants to obtain the benefits to which they are entitled. Accordingly, two other options exist. First, Congress could replace the "assessment" pay-for with the less controversial "partial hospitalization" pay-for that was considered during the Ways and Means Committee's mark-up of the Work Incentives Bill. This revenue-raiser is non-controversial, will reduce fraud and abuse, and has been scored as raising more revenue than the tax on attorneys. Second, Congress could direct the General Accounting Office to study the costs and processes of SSA's withholding and direct payment system. Armed with such a study, Congress could then examine the issue in greater depth and enact more meaningful reforms.