

## **2021 DISABILITY PRIORITY AGENDA PUBLIC POLICY PRIORITIES**

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Over the past several years, New York has advanced a number of initiatives intended to promote the independence and inclusion of people with disabilities. From the Olmstead Report, to the Employment First Initiative, and most recently, the ABLE Initiative, our community has supported and applauded the goals and intent of these initiatives. Yet, we have seen little advancement through legislation and financial investments to make the goals of these initiatives a reality. Further, with the pandemic over the last year ravaging nursing homes and other congregate settings, and upending our lives in countless ways, advancing the below priorities is all the more essential to the rights and independence of people with disabilities. NYAIL's 2021 budget and legislative priorities would advance independence and community integration for New Yorkers with disabilities. It is imperative that New York follows through on its promises to our community and enact laws to protect the civil rights and programs that allow people with disabilities to live independent, integrated lives in their communities. Below are NYAIL's 2021 legislative priorities.

### **HEALTH**

- ❖ Eliminate the Medicaid Global Cap, which has led to harmful cuts and limited eligibility for essential community-based services. A.226 (Gottfried) and S.5255 (Rivera).
- ❖ Prohibit the adoption of the controversial method of assessing the value of health treatments known as Quality-Adjusted Life Years (QALY).

### **EMPLOYMENT**

- ❖ Prohibit the practice of paying people with disabilities below the minimum wage in New York State. A.3103 (Steck) and S.1828 (Skoufis).
- ❖ Waive the State's sovereign immunity to claims under the Americans with Disabilities Act (ADA) and Section 504. A.7121 (Kelles) and S.1119 (Sanders).
- ❖ Increase employment opportunities for people with disabilities by setting a 7% hiring goal for state agencies, contractors, the legislature, and the judiciary. A.3137 (Epstein) and S.1629 (Skoufis).

### **ELECTIONS**

- ❖ Change local, village, county, and City of New York elections to coincide with the dates of state and federal elections.
- ❖ Eliminate the full-face ballot requirement in New York State.

### **TRANSPORTATION**

- ❖ Require transportation service providers, including taxis, limousines, and Transportation Network Companies (TNCs), to have accessible vehicles. A.3183 (Steck).
- ❖ Require counties to expand paratransit beyond ADA minimums. A.3181 (Steck) as well as S.5092 (Kennedy).

## **HEALTH**

- ❖ **Eliminate the Medicaid Global Cap, which has led to harmful cuts and limited eligibility for essential community-based services. A.226 (Gottfried) and S.5255 (Rivera).**

For the past few years, the State has sought to cut long-term care and limit eligibility to deal with a “budget shortfall” in its Medicaid program. Much of the reason for the so-called budget shortfall is due to spending simply exceeding a self-imposed Medicaid Global Cap. Essential programs and services have already faced significant cuts in recent years as a result of the cap. Just last year, the Medicaid Redesign Team II enacted significant cuts to eligibility for community-based long-term care which will ultimately lead to institutionalization and worse health outcomes for many older New Yorkers and people with disabilities. Now due to the pandemic, the Medicaid program has grown significantly, providing essential health care and services to hundreds of thousands of additional New Yorkers. The State must reject its current austerity approach to dealing with growth in the Medicaid program and instead spend what is needed to provide comprehensive health care and services to eligible New Yorkers. In order to do so, the State needs to eliminate the Medicaid Global Cap and take factors such as an aging population and growth in the program into account.

- ❖ **Prohibit the adoption of the controversial method of assessing the value of health treatments known as Quality-Adjusted Life Years (QALY).**

Quality-Adjusted Life Years (QALYs) are a controversial method of assessing the value of medical treatments developed by the Institute for Clinical and Economic Review (ICER). The QALY method attempts to quantify the cost effectiveness of providing a patient with one year of good health, based on collective opinions about quality of life. A dollars-per-quality adjusted life year or any similar measures should not be used in determining whether a particular health care treatment is cost effective or will be covered by insurance. The usage of this method would decrease the availability of effective medical treatments for many people living with a disability and, among other drawbacks, could increase institutionalization as a result. A Pioneer Institute report and legal analysis suggests that the QALY methodology to assess the value of medical treatments would violate the ADA if used in state Medicaid programs. This is because quality of life measures and judgments are inherently biased and discriminatory, particularly when used on people with physical or mental disabilities who may seek medical treatment.

## **EMPLOYMENT**

- ❖ **Prohibit the practice of paying people with disabilities below the minimum wage in New York State. A.3103 (Steck) and S.1828 (Skoufis).**

For too long, people with disabilities have been segregated from the rest of society, shut away in institutions and facility-based employment settings. At these segregated settings and enclave type jobs in the community, agencies have been permitted to pay individuals with disabilities well under minimum wage under section 14(c) of the Fair Labor Standards Act (FLSA). However, the Supreme Court’s 1999 *Olmstead* decision held that people with disabilities have the right to live and receive services in the most integrated setting. This is in large part why CMS required New York to phase out its subminimum wage jobs in their Transformation Agreement. Subminimum wage jobs also violate the new Home and Community Based Settings (HCBS) rule and thus would no longer be eligible for Medicaid funding.

The majority of facility-based employment settings are segregated, focused on production style work, and fail to provide adequate training or employment to individuals with disabilities and thus do not result in competitive, integrated employment. Many people with disabilities are not suited to production work and it is time we stop equating people with disabilities with this form of employment. We have also developed many successful employment models in the decades since 14(c) was enacted. It is time New York update its employment model away from segregated, subminimum wage settings to an Employment First model, developing each person's latent skills and talents and allowing them to become successfully employed like their nondisabled peers.

❖ **Waive the State's sovereign immunity to claims under the Americans with Disabilities Act (ADA) and Section 504. A.7121 (Kelles) and S.1119 (Sanders).**

State workers who have been discriminated against cannot sue their employer in Federal court for money damages, including lost wages. Businesses, schools, cities, counties, towns and villages and private employers cannot violate the ADA without the prospect of being held responsible in a court of law. State government must be held to the same standard. This bill would restore the same protections to state workers that they had from the passage of the ADA in 1990 until the *Garrett* decision in 2001--the same protections that ALL other workers still have.

❖ **Increase employment opportunities for people with disabilities by setting a 7% hiring goal for state agencies, contractors, the legislature, and the judiciary. A.3137 (Epstein) and S.1629 (Skoufis).**

One of the primary goals of the Americans with Disabilities Act was to significantly increase employment opportunities for people with disabilities. Yet the employment rate, which is roughly 34%, has not been significantly improved over the three decades since the ADA became law. It is clear that more needs to be done to tackle discrimination. According to a 2019 RespectAbility report, New York State ranks a dismal thirty-eight among states in hiring people with disabilities. This bill seeks to make the State a leader in the hiring of people with disabilities by setting a hiring goal of seven percent for the state legislature, state agencies, including SUNY and CUNY, state subcontractors earning over \$10,000, state courts and the judiciary with 50 or more employees.

## **ELECTIONS**

❖ **Change local, village, county, and City of New York elections to coincide with the dates of state and federal elections.**

People with disabilities are still fighting for our right to a private, independent vote. Progress was made through the Help America Vote Act (HAVA), which mandated all polling sites have accessible, universally designed voting machines for all state and federal elections. However, local elections are not held to the same standard. While local elections are no longer allowed to use lever machines many are being administered using paper ballots only, which are inaccessible to many people with disabilities. Moving these elections so they coincide with state and federal elections and are administered by the County Board of Elections will ensure they will be held in an accessible manner.

❖ **Eliminate the full-face ballot requirement in New York State.**

New York is the only state that still uses the full-face ballot, which requires that every race be displayed simultaneously on one piece of paper. This creates problems for people with various disabilities. The layout is confusing for people with cognitive disabilities. If there are many races, or in precincts which require multiple languages on the ballot, the font becomes increasingly smaller which creates problems for people with low vision.

Furthermore, very few manufacturers of Ballot Marking Devices (BMDs), which allow people with disabilities to mark their ballots privately and independently, make such devices that can accommodate the full-face ballot. This means that the State is left with a significantly limited choice of machines, and many machines which are more efficient and/or lower priced are not an option in New York State.

It is past time for the State to retire the full-face ballot and move to a format that displays each race individually.

## **TRANSPORTATION**

- ❖ **Require transportation service providers, including taxis, limousines, and Transportation Network Companies (TNCs), to provide an equivalent level of accessible service to wheelchair and other mobility-impaired users, comparable to the level of service they offer other passengers. A.3183 (Steck).**
- ❖ **Require counties to expand paratransit beyond ADA minimums. A.3181 (Steck) as well as S.5092 (Kennedy).**

The limited availability of accessible transportation services is a major barrier faced by people with disabilities, often leading to unemployment, inability to access medical care, lack of access to voting sites, and isolation from friends, family, and full community participation. The lack of on-demand accessible transportation is a major contributor to this pervasive problem across the State. Throughout most of the State, neither taxis or transportation network companies (TNCs) provide wheelchair-accessible service. New York City made some gains in getting a percentage of their taxis wheelchair accessible: however, much of this progress has been undermined by transportation network companies such as Uber, who are putting the accessible taxis out of business.

Outside New York City, there is virtually no wheelchair accessible taxi service. In some communities, paratransit is the only option; in others, there is nothing. It is imperative that all for-hire transportation services – including taxis and new transportation network companies – ensure a percentage of their fleet is accessible.

The Americans with Disabilities Act (ADA) mandates all counties provide paratransit services to people with disabilities unable to take the fixed route bus. Service must be provided to locations within  $\frac{3}{4}$  of a mile of the closest fixed route bus stop. While this is a minimum service, counties can and should provide transportation services to people with disabilities throughout their service area to ensure they can get to work, doctor appointments, and generally participate in their community. Further, the State must not permit transit authorities to cut back paratransit services when they limit or eliminate fixed route bus lines as this will have a disproportionately harmful impact on people with disabilities.

### **For further information, please contact:**

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