

## **2022 DISABILITY PRIORITY AGENDA BUDGET PRIORITIES**

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Under the Cuomo Administration, the budget and policy priorities of the Disability Community were routinely under attack, as critical programs and services disabled people need to live in the community were either cut back or ignored. The Hochul Administration provides an opportunity for New York State to once again be the national leader in ensuring the rights and independence of people with disabilities.

NYAIL's 2022 budget and legislative priorities advance independence and community integration for New Yorkers with disabilities. Below are NYAIL's 2022 budget priorities.

### **INDEPENDENT LIVING**

#### **NYAIL strongly supports:**

- The Executive budget's proposal to increase Independent Living funding to \$16 million, and urges an additional \$2 million be included in the final budget to bring total funding up to \$18 million which the Regents have been recommending for years.

### **HEALTH / MEDICAID**

#### **NYAIL calls for:**

- Addressing the home care crisis by increasing wages for home care workers to 150% of the State's minimum wage, as outlined in the Fair Pay for Home Care Act;
- Repealing cuts to eligibility for Medicaid advanced during the Medicaid Redesign Team (MRT) II which makes it more difficult for people to receive vital community-based long-term supports and services (LTSS);

#### **NYAIL strongly supports:**

- Creating equity in Medicaid eligibility for seniors and people with disabilities as has been recommended in the Executive Budget;
- Competitively bidding managed care plans to allow for at least two, but no more than five plans in each region.

#### **NYAIL strongly opposes:**

- Extending the Medicaid Global Cap, which has led to harmful cuts and limited eligibility for essential community-based services;
- Eliminating prescriber prevails;
- Expanding and extending Kendra's Law.

### **GOVERNMENT OPERATIONS**

#### **NYAIL strongly supports:**

- Funding the recently enacted Office of the Chief Disability Officer;
- Making it easier for people to vote by extending voter registration deadlines and ensuring a polling site on eligible college campuses;
- Improving the 55B and 55C program to increase career mobility for people with disabilities and veterans working for the State.

## AGING

### **NYAIL calls for:**

- Increasing funding for the Long-Term Care Ombudsman Program by \$6.4 million.

## HOUSING

### **NYAIL calls for:**

- Increasing funding for Access to Home to \$10 million to address pent up demand for this program, and allow all regions of the State to benefit from the program.
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## INDEPENDENT LIVING

- **NYAIL strongly supports the Executive budget's proposal to increase Independent Living funding to \$16 million and urges an additional \$2 million be included in the final budget to bring total funding up to \$18 million.**

Independent Living Centers (ILCs) are peer-led community-based organizations providing critical services to people with disabilities to assist them in navigating the ever-changing service system in order to live independent, fully integrated lives in the community. ILCs provide a wide range of critical services based on the local needs, all of which are aimed at addressing the social determinants of health: education, employment, housing, transportation, and other independent living skills. ILCs acted quickly in the early weeks of the pandemic to help meet the needs of people with disabilities in their local communities, including by making wellness checks, delivering meals, and even providing iPads to residents in nearby nursing facilities. ILCs are designed to respond to the needs of the community, and continue to pivot services to do just that, including helping with vaccination efforts by becoming sites where people with disabilities could get vaccinated, and by providing accessible, culturally competent assistance.

ILCs have been severely underfunded for the better part of two decades while the cost of providing services has increased dramatically, creating a crisis for centers and the people with disabilities they serve. While the \$2.6 million is a substantial increase in comparison to previous years, there are 41 state-funded centers, making the increase to individual centers nominal compared to the increase in operating expenses over the past several years. We are calling on New York State to provide necessary support to the network of Independent Living Centers so they can meet the needs of the over 100,000 people with disabilities they serve annually by increasing their funding to \$18 million, a level of funding routinely supported by the Regents.

## HEALTH / MEDICAID

- **Address the home care crisis by increasing wages for home care workers to 150% of the State's minimum wage, as outlined in the Fair Pay for Home Care Act.**

There has long been a home care aide shortage in parts of the State, making it difficult for people in certain regions to obtain home care. However, over the past few years, it has become an acute crisis in all parts of the State from Long Island to Buffalo. The home care crisis is by far the primary barrier to transitioning people from nursing homes back into the community. The State has an obligation under the Supreme Court decision, *Olmstead V. L.C.*, to provide people with disabilities with supports

and services in the most integrated setting, their home communities. Yet the lack of available home care is making this an impossibility for many.

The home care crisis is primarily due to falling wages and disparate treatment of women and people of color who comprise most of the home care workforce. In 2006, home care workers earned 150% of minimum wage, a time when people were more readily able to access the hours they were approved for. Yet, these wages remained stagnant while wages increased in other sectors. Now, home care workers earn less than they could working in a fast-food restaurant, which reflects poorly balanced priorities. The Fair Pay for Home Care Act would effectively address this crisis, ensuring seniors and people with disabilities are able to obtain home care, while the people who provide their services can get paid a living wage.

Governor Hochul outlined a plan to rebuild and grow the health care workforce by 20% over the next five years with a program designed to strengthen home care, improve the career pipeline, and recruit healthcare workers, among other things. The Budget plan, however, does not meet this necessary rhetoric. Instead, the plan includes:

**Bonuses for home care workers** – The proposed Executive Budget allocates the Federal funding earmarked for expanding and strengthening Home and Community-Based Services (HCBS) by funding one-time bonuses for workers. While home care workers certainly deserve a bonus, the bonus money disappears after the first year. This is not a plan to adequately reward home care workers going forward, nor provide the incentive for others to consider home care work as a career. Only by enacting Fair Pay for Home Care will New York be able to address our home care crisis, get people out of expensive and unsafe institutions, and pay workers what they deserve.

**Medicaid rate increases** – Restoring the 1.5% across-the-board cut to the Medicaid rate with an additional 1% increase is welcome and necessary. However, even with this increase, Medicaid rates remain some of the lowest in the nation and do not adequately cover the cost of care. The Governor announced this rate increase would “compete in the market to attract qualified workers.” Yet, this will do little to achieve that important goal. Permanent wage increases as outlined in Fair Pay for Home Care are required to address the crisis in home care and no plan to rebuild the workforce will be successful absent such an investment.

- **NYAIL calls for repealing cuts to eligibility for Medicaid advanced during the Medicaid Redesign Team (MRT) II which makes it more difficult for people to receive vital community-based long-term supports and services (LTSS).**

Governor Hochul failed to include in her Executive Budget the repeal of the harmful Medicaid Redesign Team II (MRT) recommendations that severely limit eligibility for home care for new applicants. Despite the MRT II’s directive to advance policies that would achieve Medicaid savings without impacting access to services, multiple proposals were enacted that make it much more difficult for certain people to receive community based LTSS. In particular, the State raised the eligibility threshold to require assistance with physical maneuvering with at least three activities of daily living (ADLs) to qualify, or they must have a dementia or Alzheimer’s diagnosis and be assessed as requiring supervision for at least two ADLs. This effectively eliminates Level I home care, which provided many people with vital assistance with activities such as cooking and cleaning (also known as Instrumental Activities of Daily Living, or IADLs) to remain in their homes. This is a discriminatory eligibility standard which bases eligibility in part on diagnosis. We call on the legislature to repeal these changes in their One House Budget proposals.

- **NYAIL strongly supports creating equity in Medicaid eligibility for seniors and people with disabilities.**

NYAIL applauds Governor Hochul for removing eligibility rules for seniors and disabled people that are much more stringent than for other Medicaid applicants. The Affordable Care Act (ACA) made it easier for working families and low-income individuals under 65 to qualify for Medicaid by raising the income eligibility to 138% of the Federal Poverty Level (FPL). However, the ACA did not increase income eligibility for disabled people and seniors, and as a result, the income eligibility limit for these groups is merely 84% of FPL. This means that single non-disabled individuals under age 65 can earn up to \$1,482 monthly and qualify for Medicaid, while seniors and people with disabilities can only qualify if their income is at or below \$884 monthly. In addition, only seniors and disabled people are subject to asset tests when applying for Medicaid.

Access to Medicaid is critical for seniors and people with disabilities, especially as it is the only insurer who covers comprehensive community-based long-term supports and services (LTSS). We welcome this progressive change to Medicaid eligibility and call on the Legislature to support this critical proposal in the final Budget.

- **NYAIL supports the proposal to competitively bid managed care plans to allow for at least two, but no more than five plans in each region.**

Consolidation of plans would reduce overhead costs, increasing the funding available for services and supports and allowing for a better rate structure that adequately funds services for individuals with high needs. This is an opportunity for the State to develop an RFP that prioritizes community living and strengthens consumer protections. NYAIL feels strongly if this proposal goes through, the State should ensure the following is included: ensure disability competence, requiring for example, all selected plans demonstrate a commitment to community-living, a robust plan for person centered planning, and to contract with disability-led organizations. Further, a certain percentage of providers should be regionally-based not-for-profits. Also essential are strong transition rights for participants since many will have their coverage interrupted as a result of this reorganization.

- **NYAIL opposes extending the Medicaid Global Cap, which has led to harmful cuts and limited eligibility for essential community-based services.**

For years, NYAIL and others have been calling for the elimination of the Medicaid Global Cap. While we acknowledge the Governor's proposal does improve the metric for the Global Cap by tying it to the 5-year rolling average of Medicaid spending projections within the national health expenditure accounts by office of the actuary in CMS, it does extend the Cap through 2024. This will allow for more growth in the program. Despite these improvements, we still believe that the Cap should be eliminated.

- **NYAIL strongly opposes eliminating prescriber prevails.**

This proposal would repeal an important patient protection in the Medicaid program which restored "prescriber prevails" for prescription drugs in the fee for service and managed care programs. Prescribers are in the best position to make decisions about what drug therapies are best for their patients, and should not be limited to health plan preferred drug lists. NYAIL urges the Legislature to protect prescriber prevails.

- **NYAIL strongly opposes expanding and extending Kendra’s Law.**

Kendra’s Law provides for court-ordered assisted outpatient treatment (AOT) for people with mental health disabilities who are unlikely to survive safely in the community without supervision based on a clinical determination, along with meeting other criteria. An important and necessary part of Kendra’s Law is that a court may not issue an AOT order unless it finds that assisted outpatient treatment is the least restrictive alternative available for the person. Yet, this proposal seeks to expand instances when forced treatment can be ordered by changing the standard to when the person “has experienced a substantial increase in symptoms of mental illness.” This is far too broad of a standard for subjecting people to forced treatment and should be rejected.

Further, County directors of community services would be authorized to require providers of services licensed or operated by OMH to provide information, including clinical records and other information concerning people receiving services under an AOT court order, when it is deemed “necessary to discharge duties.” This proposal makes it too easy for county directors to require providers to share confidential information without consent.

People with mental health disabilities have a right to high quality, voluntary treatment. They should not be subjected to involuntary outpatient treatment because the mental health system has failed them. NYAIL has previously supported the extension of Kendra’s Law with the provision that the Legislature actively look into ways to expand community-based options so they are available when people need them. The State should be focusing on improved mental health engagement strategies, and not default to a court order that takes away people’s rights and does not improve the quality of the mental health service system.

### **GOVERNMENT OPERATIONS**

- **NYAIL strongly supports funding the Office of the Chief Disability Officer.**

NYAIL applauds Governor Hochul for signing legislation (Chapter 834 of the Laws of 2021) to reinstate the Office of the Advocate for People with Disabilities, which will now be called the Office of the Chief Disability Officer. The office will be responsible for representing the rights and interests of disabled New Yorkers in the policymaking process. It will also serve as the State’s ADA Coordinator, ensuring state government meets the access needs of people with disabilities. In the proposed Executive Budget, we have been told 3 FTE will be funded under the OPWDD budget to staff the Office of the CDO. This is the bare minimum required to establish this office. We urge the State to ensure this office is fully funded so it has sufficient resources to carry out its duties and to represent the rights and interests of all people with disabilities in New York.

- **NYAIL strongly supports improving the 55B and 55C program to increase career mobility for disabled people and veterans working for the State.**

The Executive Budget proposes amending the 55B and C programs that are intended to promote the hiring of people with disabilities and veterans to the State workforce. This is part of the Governor’s proposal to move New York toward being a model employer. This proposal would allow people employed by the State through the 55B or C programs to move to a competitive class if they meet the necessary criteria. This would enhance career mobility for people with disabilities and veterans who joined the state workforce through these programs. However, this proposal does not address the fact that the State is simply not filling these positions. These programs allow people with disabilities and veterans to apply for positions without taking competitive exams. However, because they do not sit for these exams, they do not get put on hiring lists. The Employment First report had recommended hiring a 55B and 55C Coordinator to work with hiring managers to make sure people are hired

through this process. The State had also previously been working on smart technology to match qualified applicants with open positions, but the Employment First Commission stopped meeting and these efforts were put on pause prior to this initiative being implemented. More needs to be done to these programs to improve the hiring of people with disabilities and veterans in New York State.

- **NYAIL strongly supports making it easier for people to vote by extending voter registration deadlines and ensuring a polling site on eligible college campuses.**

People with disabilities still face numerous barriers to voting privately and independently. Progress has been made with recent reforms to the state's voting process, but barriers remain. As such, NYAIL has always supported efforts designed to make it easier to vote. NYAIL applauds Governor Hochul for including proposals to allow voters to register up to 10 days in advance of an election or postmarked 15 days prior to an election, rather than the 25 days in advance we currently mandate. In addition, we strongly support the proposal to ensure there is at least one polling site located on or near a college campus with 300 or more registered voters; if it is recommended by the college and approved by the Board of Elections. Barriers to transportation and inaccessible polling sites are a reality for many students with disabilities. Ensuring there is a polling site on or near their campus will inevitably make it easier for these students to participate in their democracy by exercising their right to vote.

## **AGING**

- **Increase the State's share of funding for the Long-Term Care Ombudsman program by \$6.2 million.**

The Long-Term Care Ombudsman Program (LTCOP) serves as an advocate and resource for people living in nursing facilities and other institutions. The program is intended to promote and protect residents' rights as well as their health and safety by receiving, investigating and resolving complaints made by or on behalf of residents. The pandemic demonstrated that people in institutions must be able to access an ombudsman when needed. The State must increase its share of funding to adequately serve the State's population of people in long-term care facilities.

The LTCOP receives Federal funding, but it is insufficient to provide adequate services across the State. New York's own financial support for this program is one of the lowest in the nation, which leaves providers overly reliant on volunteers. It is increasingly difficult to recruit volunteers for the program and the program is critically important. To address this resultant crisis, we urge the State to increase funding by \$6.2 million, which would double staffing levels for the program.

## **HOUSING**

- **Increase funding for Access to Home to \$10 million.**

Access to Home is an important program administered by NYS Homes and Community Renewal (HCR) that provides funding for home modifications to allow individuals with disabilities and older New Yorkers to stay in their homes and out of costly institutions. For many people, the addition of a ramp to their front door makes the difference between being able to leave the house and being homebound.

Access to Home was cut by 75% several years ago. Ever since, it has been funded at a mere \$1 million Statewide, leaving many parts of the state without the program and resulting in years-long waiting lists. We urge the State to increase HCR funding to \$10 million for this program, because by investing in Access to Home, seniors and people with disabilities around the State will remain in their

home and out of institutions, and the State will more than recoup this investment in other State agency expenditure reductions.

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