

**DISABILITIES LAW PROGRAM
PROTECTION & ADVOCACY FOR ASSISTIVE TECHNOLOGY
(PAAT)
FY 2018 PRIORITIES**

INTRODUCTION

The Disabilities Law Program (“DLP”) of the Community Legal Aid Society, Inc. provides advocacy services to promote the acquisition, utilization, and maintenance of assistive technology (“AT”) devices and services by persons with disabilities consistent with the Assistive Technology Act which has been periodically reauthorized . The Act is codified at 29 U.S.C. §3001 et seq. Section 491 of the Workforce Innovation and Opportunity Act, enacted in 2014, amended the Act by transferring its administration from the Rehabilitation Services Administration (RSA) to the Administration for Community Living (ACL) of HHS.

Authorized Activities

The AT Act contemplates that the DLP will engage in a broad array of advocacy activities under the PAAT grant. *See, e.g.*, 29 U.S.C. §§3001(b), 3002(6)(8)(12), and 3004(a). Consistent with that authorization, the DLP intends to address consumer needs through the following: 1) information and referral; 2) self-advocacy and substantive AT training through seminars and articles; 3) formal representation to secure both systemic change and individual access to AT devices and services; 4) coordination of advocacy with Delaware’s lead agency (“DATI”), Center for Disabilities Studies ACCESS Project, and other DLP programs; and 5) education of policymakers to promote enhanced access to AT in legislative, regulatory, policy-making, and funding contexts.

Eligibility for PAAT Services

Individual eligibility for PAAT services is limited to persons with disabilities, defined in the AT Act [29 U.S.C. §3002(10)] as follows:

The term “individual with disability” means any individual --

- (i) who has a disability; and
- (ii) who is or would be enabled by an assistive technology device or assistive technology service to minimize deterioration in functioning, to maintain a level of functioning, or to achieve a greater level of functioning in any major life activity.

The AT Act [29 U.S.C. §3002(9)] defines “disability” as follows:

The term “disability” means a condition of an individual that is considered to be a disability or handicap for the purposes of any Federal law other than this chapter

or for the purposes of the law of the State in which the individual resides.

Projected Services, Activities, and Outcomes

The DLP identifies the priorities, outcome measures, and rationale for the PAAT during FY 18 as follows.

I. EDUCATION

GOAL: The PAAT will secure timely access to appropriate AT for students with disabilities.

SYSTEMIC ADVOCACY OBJECTIVE:

- 0100 A. Collaborate with the DATI and State councils to provide analytical assessment of proposed legislative, regulatory, and policy initiatives which facilitate access to appropriate AT by students with disabilities enrolled in public and private schools, including initiatives implementing the March 30, 2016 recommendations of the SCR 22 Task Force on State Educational Technology.
- 0101 B. In concert with DATI and GACEC, facilitate implementation of Accessible Instructional Materials (AIM) project to promote access to alternative format curricular materials by students with limitations in effectively using conventional printed text and graphics.

INDIVIDUAL ADVOCACY OBJECTIVES:

- 0102 B. Provide legal assistance to students experiencing barriers to access to appropriate, important AT devices and services at the preschool, primary, and secondary education levels.
- 0103 C. Provide legal assistance to students experiencing barriers to access to appropriate, important AT devices and services at the post-secondary education level.

OUTCOME MEASURES:

- A. As a result of PAAT analysis, a minimum of 3 laws, regulations, or policies affecting student access to AT will be adopted or improved.
- B. As a result of PAAT intervention, a minimum of 5 students will secure access to appropriate, important AT devices and services.

RATIONALE:

The special education system has historically served as a primary provider of AT to students with disabilities. The Delaware Department of Education implements federal IDEA-B regulations through an array of State regulations covering AT, including provision of AT for home use, routine checking of surgically implanted medical devices, and access to accessible materials [14 DE Admin Code 923, §§5.0, 13.0, and 72]. The PAAT anticipates continued

advocacy to facilitate implementation of these standards. Supporting access to alternate format curricular materials is expected to continue in concert with the GACEC and Department of Education's Accessible Instructional Materials ("AIM") project. The AIM project focuses on overcoming multiple barriers to student access to and use of educational materials. Given the proliferation of Internet-based educational content-sharing resources (e.g. Schoology), the PAAT envisions supporting efforts to promote usage which does not undermine student access to accessible materials. Current IEP forms include discrete fields to identify both AT needs and "intervention supports and strategies for students who may have difficulty accessing and/or using grade-level textbooks and other core materials in standard print formats." The PAAT envisions advocacy to promote inclusion of such supports in IEPs and conforming provision of IEP-listed supports. Legislation (H.B. No. 1) was enacted in 2011 which converts special education funding from a classification-based model to a needs-based model. The legislation incorporates PAAT-authored definitions of "intensive" and "complex" units which explicitly require consideration of AT. The PAAT anticipates monitoring and supporting implementation of the law to ensure due consideration of AT needs in IEP team determinations of unit funding classification. State legislation (H.B. No. 334 and S.B. No. 229) enacted in July, 2014 authorize revamping of the public school testing and assessment systems which incorporate AT-related accommodations and supports. The PAAT will continue to promote the full accessibility of all assessments and availability of student-specific AT-related accommodations and supports in the testing and assessment systems. PAAT-authored legislation (S.B. No. 100) limiting the use of physical and mechanical restraint in public schools became effective in 2014. The legislation contains references to adaptive devices, mechanical supports, and therapeutic devices. The PAAT will continue its collaboration with the GACEC and Department of Education to facilitate student-oriented implementation of the initiative, including development of regulations to implement legislative (H.B. No. 142) amendments to the law effective July 1, 2018. In 2017, the PAAT issued an analysis of legislation (H.B. No. 50) which would expand the availability of school nurses, important personnel supporting AT evaluation and services. The PAAT envisions follow up in 2018. The SCR 22 Task Force on State Educational Technology issued a March 30, 2016 final report with several critical findings, including lack of DOE AT guidance, inadequate funding for AT, and educator reluctance to consider inclusion of AT in IEPs. Several systemic remedial recommendations were included in the report which merit PAAT support. Conversely, the PAAT will monitor pending legislation (HCR No. 34; H.S. No. 1 for H.B. No. 12) which could undermine the availability and funding of AT under existing standards.

Individual legal assistance is contemplated for children seeking the following: 1) AT-related assessments; 2) inclusion of AT in IEPs/IFSPs; and 3) remedies for default in provision of IEP/IFSP-listed AT. At the post-secondary level, students may require AT supports and accommodations to provide equal educational opportunity.

II. MEDICAID

GOAL: The PAAT will secure improved access to AT by Medicaid beneficiaries through promotion of comprehensive Medicaid coverage of AT and compliance with due process standards.

SYSTEMIC ADVOCACY OBJECTIVE:

- 0200 A. Collaborate with the DATI and State councils to provide analytical assessment of proposed legislative, regulatory, policy, and funding initiatives which facilitate access to appropriate AT by Medicaid beneficiaries.

INDIVIDUAL ADVOCACY OBJECTIVE:

- 0201 B. Provide legal assistance to Medicaid beneficiaries denied coverage of appropriate, important AT devices and services.

OUTCOME MEASURES:

- A. As a result of PAAT analysis, a minimum of 5 non-Federal laws, regulations, policies, and funding initiatives affecting access to AT will be adopted or improved.
- B. As a result of PAAT intervention, a minimum of 5 Medicaid beneficiaries will secure access to appropriate, important AT devices and services.

RATIONALE:

The Medicaid program has historically been a primary source of a broad range of AT devices and services. PAAT advocacy will include the following: 1) deterrence of discretionary restrictions on access to AT influenced by changes in Federal or State law or funding; and 2) support for implementation of the Diamond State Health Plan, Diamond State Health Plan Plus, Medicaid Buy-in (a/ka Medicaid for Workers with Disabilities Program) and Money Follows the Person initiatives. The PAAT envisions systemic advocacy in concert with the DATI to promote Medicaid MCO approvals of appropriate AAC devices for students with disabilities. The PAAT anticipates supporting the implementation of a “Pathways to Employment” §1915(I) Medicaid State Plan amendment which became effective July 1, 2014. The “Pathways” program offers employment and vocational supports, including AT, for qualifying individuals with visual and other physical impairments. The PAAT will continue to participate in Medicaid Managed Care conference calls sponsored by Delaware Family Voices to offer technical assistance on AT issues arising in the DSHP and DSHP+ programs. The Division of Medicaid & Medical Assistance (DMMA) has scheduled quarterly meetings with the PAAT in FY18 which will provide the opportunity to address systemic AT issues, including quality assurance and provision of warranties for Medicaid-funded home modifications. Effective July 1, 2017, DMMA and the Division of Developmental Disabilities Services (DDDS) initiated a new Medicaid Lifespan Waiver which includes home and vehicle accessibility adaptations and specialized medical equipment and supplies not otherwise covered by Medicaid. The PAAT anticipates supporting consumer-oriented implementation of the Waiver.

Individual assistance is contemplated for beneficiaries unreasonably denied access to AT devices or services. In particular, Medicaid MCOs have historically manifested a constrictive approach to approval of AT for both children and adults. This results in resort to both internal appeals and administrative hearings. The Diamond State Health Plan Plus program, which became effective in April, 2012, has significantly increased the number of Medicaid beneficiaries subject to MCO oversight and “screening” of AT requests. The DSHP+ program covers an extensive array of AT, including home modifications, specialized durable medical equipment, and personal emergency

response systems. Finally, DMMA proposes to subject Medicaid Lifespan Waiver enrollees to the MCO system which would likely result in more appeals of adverse decisions involving AT [21 DE Reg. 156 (August 1, 2017)].

III. OTHER STATE AGENCY AT SOURCES

GOAL: The PAAT will secure improved access to AT through government agencies and entitlement programs in contexts other than education and Medicaid.

SYSTEMIC OBJECTIVE:

- 0300 A. Collaborate with the DATI and State councils to provide analytical assessment of proposed legislative, regulatory, policy, and funding initiatives which facilitate access to appropriate AT by persons with disabilities in contexts other than education and Medicaid.

INDIVIDUAL OBJECTIVE:

- 0301 B. Provide legal assistance to persons with disabilities experiencing barriers to access to appropriate, important AT devices and services in contexts other than education and Medicaid.

OUTCOME MEASURES:

- A. As a result of PAAT analysis, a minimum of 3 non-Federal laws, regulations, policies, and funding initiatives affecting access to AT will be adopted or improved.
- B. As a result of PAAT intervention, a minimum of 5 persons with disabilities will secure access to appropriate, important AT devices and services.

RATIONALE:

Apart from the Medicaid and education contexts, there are several other government sources of AT, including the Medicare program, Division of Vocational Rehabilitation, Division of Public Health, Division of Developmental Disabilities Services, Division of Aging and Adults with Physical Disabilities, and Department of Transportation. For example, DSAAPD maintains a fund for environmental modifications and administers an attendant services program which includes AT support services. DVR offers funding to cover the costs of vocationally-related vehicle modifications. DPH maintains a hearing aid loan program for children up to 18 years of age. DDDS clients often have AT related to mobility, communication, or implementation of behavioral plans.

In the transportation context, the PAAT issued an analysis in 2017 of pending legislation (H.B. No. 83) affecting the accessibility of DelDOT rights of way. The PAAT envisions follow-up in 2018. The PAAT anticipates collaboration with the SCPD in supporting specialized taxi services (H.S. No. 1 for H.B. No. 275, §258); advocacy to expand access to State-subsidized vehicle modifications; preparation of revised legislation to promote the availability of accessible parking; and promotion of local AMTRAK station accessibility improvements.

The PAAT will collaborate with the SCPD and DHSS to promote implementation of PAAT co-authored attendant services legislation codified at 16 Del.C. Ch. 94. The attendant services program includes AT coverage. The PAAT will collaborate with the SCPD to promote appropriate funding of AT through the Brain Injury Trust Fund reauthorized by §45-01-00 of the FY18 budget. The PAAT will continue to serve on the Easter Seals-sponsored interagency AT Loan Advisory Board which meets biannually.

Subject to Governor's approval, a PAAT representative will continue to serve as a member of the Violent Crimes Assistance Program (VCAP) Advisory Council to provide technical assistance on program operations. The VCAP funds personal safety property, door locks, and other AT for victims of violent crimes.

Finally, individuals may be aggrieved by denials of eligibility for AT within discrete public programs. This results in requests for PAAT advocacy to overturn adverse decisions.

IV. AT WARRANTIES

GOAL: The PAAT will promote enforcement of the PAAT-authored AT "lemon law" codified at Title 6 Del.C. Ch. 50B.

INDIVIDUAL ADVOCACY OBJECTIVE:

0400 Provide legal assistance to aggrieved buyers or lessees of defective or non-conforming AT covered by Delaware's AT "lemon law".

OUTCOME MEASURE:

As a result of PAAT intervention, 3 persons with disabilities will benefit from enforcement of Delaware's AT "lemon law".

RATIONALE:

In 2004, Delaware adopted comprehensive PAAT-authored legislation providing warranty protections to purchasers and lessees of AT. However, unless enforced, the legislation may have limited effect. The PAAT anticipates provision of legal assistance to aggrieved individuals with disabilities invoking the protections in the law.

V. TRAINING; SELF ADVOCACY

GOAL: The PAAT will offer technical assistance and training to individuals and groups to foster consumer knowledge of rights and strategies to access AT.

INDIVIDUAL ADVOCACY OBJECTIVE:

0500 A. The PAAT will provide information, referral, and brief technical assistance to soliciting individuals and agencies to facilitate access to AT.

SYSTEMIC ADVOCACY OBJECTIVE:

- 0501 B. The PAAT will offer training on AT-related topics through seminars; training events (including LIFE conference); website information; and articles.

OUTCOME MEASURES

- A. The PAAT will provide information, referral, and brief technical assistance on AT-related topics to a minimum of 12 soliciting individuals and agencies.
- B. One thousand persons will receive training in AT through articles, seminars, web-based materials, and other educational activities.

RATIONALE:

The PAAT can leverage resources and benefit large numbers of constituents through training and technical assistance activities. Such activities also “empower” consumers who can engage in self-advocacy based on knowledge of AT-related rights and access strategies. In particular, the LIFE Conference, co-sponsored by the DATI and PAAT, includes an AT track and many AT exhibitors. The PAAT will serve on the LIFE Conference design team and exhibit at the January 24, 2018 event. The PAAT will present or co-present the following conference seminars involving AT: 1) Medicaid Funding for Augmentative Alternative Communication (AAC); and 2) State Legislation: What to Expect in 2018. The PAAT will also maintain links with the Delaware Disability Hub (www.delhub.com) website with AT-related resources for families and students of transitioning youth with disabilities.

General Standards for Determination of Level & Type of Services Offered

Recognizing that the demand for assistance may exceed available resources, the following factors will be considered in determining the level and type of services which will be offered to a group or individual:

- a. potential impact on client;
- b. merits of case (both factually and legally);
- c. realistic alternate sources for referral and assistance (e.g., Delaware Volunteer Legal Services; Client Assistance Program);
- d. applicant’s ability to self-advocate; and
- e. potential impact on other constituents or systems.

All five of the above factors should be considered for each case being evaluated for direct services.