

**DISABILITIES LAW PROGRAM
PROTECTION & ADVOCACY FOR ASSISTIVE TECHNOLOGY
(PAAT)
FY 2019 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

DLP will engage in a broad array of advocacy activities authorized under the PAAT grant. See 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 (“DATP”), 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 19 as follows.

I. AT IN 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.
- 0101 B. In concert with DATI and GACEC promote access to alternative format curricular materials by students with limitations in effectively using conventional printed text and graphics. Support AIM Delaware program through CDS.

INDIVIDUAL ADVOCACY OBJECTIVES:

- 0102 A. 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 B. 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. At the request of councils, a minimum of 3 laws, regulations, or policies affecting student access to AT will be analyzed, with recommendations as appropriate.
- 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. The PAAT anticipates continued advocacy to facilitate implementation of these standards. The PAAT envisions advocacy to promote inclusion of such supports in IEPs and conforming provision of IEP-listed 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.

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 COVERAGE OF AT

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. At the request of councils, a minimum of 5 non-Federal laws, regulations, policies, and funding initiatives affecting access to AT will be analyzed, with recommendations as appropriate.
- 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 payment for broad range of AT devices and services. The PAAT envisions systemic advocacy to promote Medicaid MCO approvals of appropriate AAC devices for students and others with disabilities. PAAT will support implementation of the “Pathways to Employment” program, which offers employment and vocational supports, including AT, for qualifying individuals with visual and other physical impairments. The PAAT will continue to monitor Medicaid Managed Care conference calls sponsored by Delaware Family Voices and offer technical

assistance on AT issues arising in the DSHP and DSHP+ programs through individual advocacy. The DLP and the Division of Medicaid & Medical Assistance (DMMA) have scheduled quarterly meetings in FY19 which will provide the opportunity to address systemic AT issues, including quality assurance and provision of warranties for Medicaid-funded home modifications. The PAAT anticipates supporting consumer-oriented implementation of the DDDS Lifespan Waiver, which includes funding for home modifications.

PAAT will provide representation in appeals of denials of AT by Medicaid MCOs. The DSHP+ program covers an extensive array of AT, including home modifications, specialized durable medical equipment, and personal emergency response systems.

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. At the request of councils, a minimum of 3 non-Federal laws, regulations, policies, and funding initiatives affecting access to AT will be analyzed, with recommendations as appropriate.
- 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.

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 FY19 budget. The PAAT will continue to serve on the Easter Seals-sponsored interagency AT Loan Advisory Board which meets biannually.

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

IV. 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:

- 0400 A. The PAAT will provide information, referral, and brief technical assistance to soliciting individuals and agencies to facilitate access to AT.

SYSTEMIC ADVOCACY OBJECTIVE:

- 0401 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 2019 event. The PAAT will also maintain links with the Delaware Disability Hub (www.delhub.com) and other websites 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.