The Voice of Disability Rights in the
(Bureaucratic) Empire State since 1984

# AccessAbility

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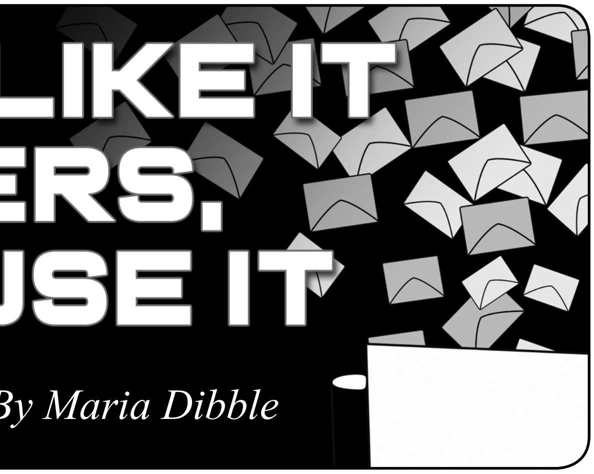
# VOTE LIKE IT MATTERS, BECAUSE IT DOES



By Maria Dibble

INSIDE

I was raised to believe that the United States was the greatest country on earth and I still believe that. Have we made mistakes? Of course we have. Are we perfect? Not by a long shot. Is everyone treated equally and fairly? Certainly not yet. But if we want to improve things in our nation, there is only one sure way to do it: **VOTE!**

We take this right to vote for granted in America. I don't think most people appreciate the value of one vote. Races across even our own region have been very close in recent years, and every single vote had an impact. Isn't that amazing? Your single vote could make the difference between a candidate winning and losing. It's a lot of power to have, and it should be exercised judiciously, but it should be used.

We need to learn to appreciate the value of our democracy and the rights and freedoms it embodies. Just look around you. Citizens of Russia are killed if they disagree with their government and actively try to get others to disagree as well. We know that the Russian leadership has attempted to poison one of its dissidents several times just for speaking out against his government. People in China fare little better. Not only can Americans speak out about what we like and don't like, but we can actually take steps to change things by voting. I know; I've demonstrated and spoken out about the rights of people with disabilities and have fought hard for and against proposed bills and laws. And I'm happy to report, no one has ever tried to poison me. That's because I live in the US, where my right to protest and speak out is preserved. After I do all I can by writing or voicing my concerns, I follow it up by voting.

Are you disturbed about the strife and discord that is plaguing our nation and threatening our very existence as a democracy? If so, please let politicians know by voting. This isn't a popularity contest. We need to vote for the person we think will uphold our constitution and the freedoms and rights granted within it.

Are you disturbed by the tenor of hate and racism that you hear daily in the media? There is only one way to fix this problem: **VOTE**. Tell your elected officials that you won't tolerate white supremacist rhetoric and extremist propaganda. Tell them with your vote.

There has been a great deal of discussion about states changing voting laws to dilute the power of minorities, and those laws will succeed unless people express their adamant objections by voting. And in national elections, like for senators and President, district lines don't matter, but your vote certainly does. We are Americans, usually a compassionate and caring people. Let's not succumb to fear mongering and attempts to deny the very roots that our country was founded on. Let's get out there and show the world that America still believes in freedom and democracy. Let's preserve all that is good in America by casting our vote on Election Day. I know I will.

AccessAbility

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**Authorship**

All articles appearing in this newsletter are written by Ken Dibble unless otherwise noted. Generally, I get tired of seeing my name on every page, and I'd rather use the space for something more interesting. I do put my name on controversial stuff, though, so you'll know who to blame.

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# Managed Care Caught Ripping off the State, Again!

Once again NY's Medicaid managed care system has failed an audit by the state's Comptroller, Thomas DiNapoli. This time DiNapoli reported that managed care plans were overpaid about $2.8 billion, mostly for services that were never received, between January 2015 and March 2021. DiNapoli's report, and, therefore, the media, focused on about $700 million that was paid for services for people who allegedly were not eligible for them. However, the state's managed care system, which is run by the Department of Health (DOH), has a long history of erroneously declaring people ineligible for Medicaid—errors that are corrected after strenuous advocacy and formal appeals. What is far more troubling is the failure of managed care plans to adequately meet the needs of eligible people with disabilities for whom they were paid billions of dollars.

DiNapoli's report was released on August 5, 2022. In one particularly appalling example, a person who was repeatedly assessed, every six months, as needing community-based long-term care services—homecare—was actually served on fewer than 28 days within those six months. Over three years, DOH paid this person's managed care plan $268,724, but the person only got $13,907 worth of services. In fact, almost 60,000 people were served on fewer than 60 days within at least one six-month period during the six years covered by the audit, yet their plans were paid the full monthly per-person rate for each of those months.

What's going on here?

First, managed care plans are ***supposed*** to strictly limit services, and that's why they are paid monthly lump sums for each enrollee no matter how many services are provided. The plans have an incentive to spend as little of that money as possible on actual services, so they can keep the rest and put it into salaries, benefits, and other perks for their executives, and dividends for shareholders. It's true that by law, Medicaid managed care plans are allowed to use up to 15% of those payments for purposes other than providing services, and that may not seem like much. But historically, before managed care, administrative costs for Medicaid programs averaged between 6% and 8% per year. Let's assume, on average, that after carrying out necessary administration, these plans are getting a 7% profit. New York spends about $15 billion on Medicaid managed care annually; 7% of $15 billion is just a bit over $1 billion, every year.

Second, disability advocates are constantly fighting managed care organizations' (MCOs) efforts to cut services below levels that are adequate to keep people

## BAD WEATHER?

If the weather is bad, **call 724-2111 (voice/TTY)** to make sure we're open. The answering machine will explain why we're closed. Listen to the entire message since we sometimes ask you to call back to check later in the day. If we're going to be closed, the message will say so by 7:30 am. For Deaf consumers, there will be a generic TTY message saying we're closed. This message is always the same no matter why we're closed.

safe and healthy in their homes. MCOs, like governments, do their accounting on an annual basis. The state is supposed to reduce the rates that are paid to MCOs if their spending on services goes down, but the delay between when services are cut and MCOs start getting a reduced rate can be several years, during which executives and stockholders continue to collect those excess profits. DOH can demand that MCOs pay back improperly received funds, but it rarely does; MCOs can negotiate the amount down to a fraction of what they owe, and repayments can be deducted from future payments or from mandated reserve funds, so they have little impact on those executives and stockholders.

When people don't get enough homecare, their health deteriorates, and they may end up in nursing facilities. MCOs can then stop serving them, which they will do because nursing facilities are a lot more expensive than homecare, but in the meantime they will have sucked huge sums out of the fees they were paid for services that they did not provide. And next year there will always be more new customers to replace those who left the plan because the percentage of our population that is elderly keeps increasing.

As for money spent on allegedly ineligible people: Most people who use long-term care are elderly and/or poorly educated. Although NY electronically collects the information it needs about people's incomes, it still requires people to meet strict deadlines to fill out and mail long, confusing paper forms to re-determine Medicaid eligibility every year. Every year people fail to complete and mail the forms on time, or they screw them up, or they are lost in the mail, or the disenrollment warnings they are supposed get are not sent, or ***they*** get lost, or arrive past the deadline, and so even though they are, in truth, eligible for Medicaid, they get declared ineligible. Those declarations are what the Comptroller was looking at when he did his audit. Then advocates have to spend weeks or months getting these situations corrected. When all is said and done, the numbers of truly ineligible people for whom MCOs billed for services are much, much lower than DiNapoli reports.

As shocking as these facts are, there is nothing new here. This has been going on ever since NY started forcing managed care on people with disabilities, and every couple of years or so, the Comptroller releases another audit report with another few billion dollars in overpayments, and makes the same recommendations that DOH improve its oversight of the program. DOH then promises to improve, then does a little tinkering around the edges, makes no very big changes, and the overpayments continue, and so on. We are now closing in on ten years of this pattern.

Medicaid managed long-term care does not save money in NY; it simply transfers money that used to be spent on services into the pockets of for-profit insurance companies, to the tune of over a billion dollars every year. DOH is not motivated to reduce this profit stream when overpayments occur, whether due to errors or something more sinister, because it is overseen by a governor, and its activities are authorized by legislators, who get campaign contributions from insurance companies. And as a result, the people who need the services are injured, their lives shortened, and their misery increased when they must leave their homes and enter institutions.

## Supported Decision Making and Other New (F)Laws

Governor Hochul proudly announced that she had signed several bills "upholding the rights of people with disabilities" in late July.

A careful review of those bills indicates not much to be proud of.

A couple bills change references to "mental retardation" in various state laws to "developmental disability." On the surface this is nice; many people find the former term offensive. However, the current term for that disability is "intellectual disability." Intellectual disability is only one form of developmental disability, and it is the only one that involves intellectual functioning. Some of these laws contain provisions that are really only sensibly applicable to intellectual disability; the changes apply them to all kinds of people who have no intellectual impairments whatsoever.

There are also changes to apply "people first" phrasing to both developmental disabilities and mental illness. Again—a nice attempt to satisfy people who object to references to "the mentally ill" and so forth. But not everybody agrees. The "people first" thing is mostly a preoccupation of advocates for those with intellectual disabilities. "Disabled people" is pretty much okay with everybody else, and many autistic people really dislike "people with autism." They consider autism to be a fundamental aspect of who they are as people that should be respected and valued.

We at STIC believe there are more important things to get aggravated about than the names that people call each other, but we do have to point out that equating intellectual disability with developmental disability in law is a bad mistake that will likely have unintended consequences.

Another law orders OPWDD to "develop and implement a public awareness campaign that combats the discrimination, stigma and stereotyping of individuals with developmental disabilities across the state," using public forums and social and mass media. Our response is, "So what?" OPWDD has done this before, without any noticeable effect. If the legislature is going to pass laws to mandate PR campaigns for people with disabilities, we'd like to see one to combat discrimination against people with mental illness instead of bills to make it easier to lock them up. Or how about a campaign to promote adequate wages for homecare workers to keep people in their communities?

We can't say there is nothing good in this package of legislation. There were bills to increase fines for dumping or plowing snow onto accessible parking spaces, a perennial problem, and to allow police to enforce handicapped parking regulations in parking lots for individual facilities, not just shopping centers with more than five stores.

But the worst thing here is the Supported Decision Making bill. As we reported last fall (*AccessAbility* Fall 2021), it "conveys the professional do-gooder intent of formalized Supported Decision-Making processes: that decisions made pursuant to a formal agreement entered into by decision-makers and supporters must be accepted by everyone in the same way that decisions made by nondisabled people are . . . **EXCEPT**: Decisions made by people who receive, or are eligible for, OPWDD services can be overridden by ***anyone*** as long as they 'believe' that the decision 'will cause the decision-maker substantial and imminent physical or financial harm' (section 82.11(D)). There is no requirement in the bill to submit evidence supporting such 'beliefs' and no method to appeal those 'beliefs.'"

Since all discrimination against autonomy and freedom of choice among people with developmental disabilities is based on such unfounded "beliefs," this law simply ensures that nobody will ever have to take supported decision-making seriously if they don't want to. We are astounded that the autistic community did not organize to defeat this. They will surely regret it.

# courts watch

### *T.C. et. al. v DOH & OPWDD*: More group homes is not the answer.

This class-action lawsuit was filed by NY's official Protection & Advocacy agency for people with developmental disabilities, Disability Rights New York (DRNY), and other attorneys, in federal district court in New York City, on June 16, 2022. It alleges that the NYS Department of Health (DOH), as the lead agency for Medicaid services, and the state's Office of People with Developmental Disabilities (OPWDD), have systematically failed to provide "community based" residential and other services to "thousands" of people with developmental disabilities, in violation of federal Medicaid law, the Americans with Disabilities Act (ADA), and Section 504 of the federal Rehabilitation Act.

The case has three interesting features: It challenges OPWDD's practice of allowing service providers to refuse to serve specific individuals who qualify for their services even when they have vacancies available; it calls for services, including residential placements, to be in place within 60 days of a request; and it charges violations of the Medicaid law's "reasonable promptness" requirement. Unfortunately, all this goodness is somewhat marred by the complaint's emphasis on more group homes as a solution.

The complaint lists eight people with developmental disabilities, some with co-occurring mental health disabilities, who have been living in hospitals, a nursing facility, and a developmental center because their requests for community services have gone unanswered. All of the plaintiffs have Medicaid and were found by OPWDD to be eligible for the agency's community-based services. Five were referred to multiple "voluntary" (private not-for-profit) provider agencies, as well as to state-operated group homes, that had vacancies, and were rejected—one of them 33 times! The others seem not to have ever been referred at all. One of the plaintiffs has been languishing in an institution for six years after he was found to qualify for community services; another has been waiting five years. Others have been waiting only a few months. None of them were given explanations for why they were rejected, and neither OPWDD nor DOH told them that they could seek a Medicaid Fair Hearing to address their complaints.

The plaintiffs filed a NY State Freedom of Information Law (FOIL) petition to find out how many New Yorkers are in similar situations. They learned that "between January 1, 2015, and October 31, 2021, OPWDD received 12,557 requests for HCBS Waiver services and certified residential opportunities. Of those 12,557 requests, 4,494 never resulted in a residential placement." That's a 36% failure rate and indicates that the eight plaintiffs fairly represent the class of people with developmental disabilities who are stuck unnecessarily in institutions.

The pandemic imposed additional delays on what was already a very slow process for delivering services to people, but ultimately the main reason for those failures is, of course, money. The state doesn't want to spend what it would cost to adequately serve these people. But it's more expensive to serve them in those institutional settings than it would be to serve them in their own homes, or even in small group homes. So what's the real calculation being made here?

Money is not the only factor. There are at least two others. One is time: Budget calculations are made annually, not over time. It only matters to politicians and bureaucrats (and right-wing Medicaid-haters in the media) how much is spent to serve some number of people this year. If the state can keep some of them from being served until next year—even if it will cost more to serve them next year, the state will take that approach to spread out the spending over time. The real target is people who have lived with their families without state help; the longer the state waits to put them "into the system," the better it is for annual budgets. After all, if we wait long enough, some of them will die without the state ever having to pay for them. But the side-effect is that the community-based service system doesn't have the capacity to quickly take on new people even if NY's total spending would go down, as it would when moving someone from a hospital or developmental center to a group home. Another factor is influence. Hospital owners are campaign contributors. Hospitals in NY have an incentive to keep beds full, since in recent years officials have been on a tear to close those with unused beds. The owners can call their political friends and suggest that they shouldn't rush to get people with developmental disabilities out of their hospitals. Ditto for public employee unions whose members work in developmental centers. Another possible factor is stupidity: Too many politicians, bureaucrats, and

Medicaid-haters can only think about one budget line at a time. If you point out that they will actually increase overall state Medicaid spending by keeping somebody in a hospital with DOH Medicaid hospitalization dollars instead of moving them to a cheaper group home with OPWDD Medicaid waiver money, they'll give you a blank stare. "But we're trying to cut growth in waiver spending," they'll say. Ditto for OPWDD developmental centers versus group homes.

Another way the state controls costs is by keeping Medicaid rates low—often too low to ensure there are enough providers to meet demand. Although federal law requires states to set rates high enough to ensure that services are available, federal courts have made that requirement unenforceable. However, federal courts have ruled that another Medicaid requirement—"reasonable promptness"—may be enforced by Medicaid recipients who file lawsuits. This is the second recent lawsuit to use that approach in NY. Making people wait five or six years is pretty clearly "unreasonable," but this case includes people who had only been waiting about two months at the time it was filed. The federal guidance for how to decide what is reasonable notes that the time frame stretches as the difficulty of providing the services increases. An organization certainly can't build or buy a new group home in 60 days, but it could lease one. That still wouldn't leave enough time to complete physical renovations, not only for accessibility, but also to comply with NY's other strict, and sometimes pointlessly arbitrary, rules for those facilities. 60 days might be a negotiating position, but it may be an effort to increase use of leasing, a much more flexible way to allocate housing.

It may also be a way to get OPWDD to force providers with vacancies to accept people whom they've been refusing to serve. These days, with staffing shortages rampant, such vacancies may be more theoretical than real. It doesn't matter if you literally have empty beds, if you can't hire enough staff to support them. Group homes and day programs have been closed all around the state for that reason. But providers also reject people because they think they will be too hard to serve, usually due to their behavior. Behavioral issues are common among certain types of developmental disabilities and some of the plaintiffs have co-occurring mental health issues as well. That requires knowledge and skill, but those things are already required for these program operators. The fact that it takes more effort and thoughtful planning to serve some people is not a valid excuse for refusing to serve them at all. Providers who don't want to take on behavioral issues should be viewed as unqualified. They should be told that either they will accept all applicants, or ***all*** of the money they get will be transferred to competent providers.

The 60-day requirement might also be a way to increase use of residential supports in people's own homes, but that seems unlikely. The complaint says, over and over, that OPWDD doesn't have enough "certified residential settings" and that those settings are what the plaintiffs need and want. OPWDD certified residential settings are either ICFs (Intermediate Care Facilities), including both developmental centers and smaller facilities, or IRAs (Individual Residential Alternatives), which can be either "supervised"—24/7 staffing—or "supportive"—for people who need, on average, fewer than four hours of help daily. These categories are inflexible. People who need 5 or 6 hours a day but not 24/7 support have to go into a supervised IRA anyway, even though adding hours in a supportive IRA would be cheaper. It is possible to set up a supportive IRA for one or two people, but in practice this is almost never done because the rates are only adequate when serving larger groups. In any case, two of the plaintiffs specifically claim they need supervised 24/7 IRAs, and none are asking for a one or two-person apartment.

The two plaintiffs who want the more intensive—and expensive—residential services say they need them because they "sometimes engage in unsafe behaviors." Well, so do I. But seriously: Many years of research and actual practice demonstrate that people can be assisted to stay safe without constant oversight. The details given about these two plaintiffs—that they are autistic and have been known to act out after having been forced to live in institutional settings where they have nothing interesting to do and no control over their environment—suggest that there is nothing so dangerous about their behavior that it couldn't be substantially improved simply by giving them a better quality of life in integrated settings.

The complaint does talk a lot about HCBS (Home and Community Based Services), which is a Medicaid waiver that provides funds for things like personal assistance, supported employment, and training in how to negotiate real community settings. Federal law says that only people who don't live in institutional settings can get HCBS. So the first step in providing people the support they need for a better life is to get them out of institutions, and the lawyers here may be angling for a "step-down" model for housing: At all costs, get people out of warehouses and into a place, however confining, where they can at least begin to grow and prosper; then later they can move on to even more integrated settings. If that's the plan, it's not a very good idea. Even if the step-down places are leased, they will create a drag on the system. They will have to be continuously and reliably financed in a way that will encourage their operators to hold on to the people who live there as long as possible. It would be better to adopt a "home first" approach that puts people into individualized settings, either with their families, or in their own apartments, right away.

As it stands, the way OPWDD housing rates are set up, if the plaintiffs win this suit it's likely to generate a construction boom for supervised IRAs with six or more beds. OPWDD has a policy to limit new IRAs to four or fewer beds, but the agency's Commissioner can make "exceptions" to that rule—and she will likely view a court order as an emergency that justifies such an exception. Although we applaud the intent of the suit and some of its concepts, we wish the lawyers had thought this out a bit more carefully.

This case has a long row to hoe before it is resolved. We'll keep track of it for you.

## *Gallardo v Marstiller*: Unsettled settlements

Federal Medicaid law requires states to assign any payments a Medicaid recipient receives from third parties for medical care to themselves. In other words, if you're on Medicaid and you are injured in a car accident, and you sue the driver and receive money for damages related to your health, states must take at least some of that money from you. They typically won't take all of it, because the law also has an "anti-lien" provision that forbids states from taking your "property" to pay for medical care.

That's confusing, isn't it? If you get a damage payment, it becomes your property. The anti-lien provision would seem to ensure that you could keep all of it. But the fact that the other provision, requiring assignment of third-party payments, exists, requires courts to find some way to sort this out without invalidating either of those rules—if they can. The anti-lien provision came first, in the original Medicaid law enacted in 1965. The assignment provision was added years later. As it stands now, the assignment provision is an exception to the anti-lien provision, and states must enact laws to establish how much of those payments will be assigned.

So states typically assign only a percentage of the payments to themselves, and they also may, or may not, say that the percentage can only be calculated in relation to what the state has already spent for your medical services, and exclude any future expenses.

Gianinna Gallardo was a teenage girl who was severely injured when a truck ran into her as she stepped off a school bus. She's been in a "persistent vegetative state" ever since, and her medical and related services have been paid for by Medicaid in Florida. Gallardo's parents sued the truck's owner and driver, and the school district, for damages, and they received about $800,000.

The anti-lien provisions don't let the state take the entire settlement, only the portion of it that is designated to cover medical services and supplies. The argument centers on whether the state can recover only costs already paid, or those costs plus any future anticipated costs to be paid by Medicaid. About $35,000 was specifically designated for already-incurred medical expenses, and "some portion" was said to be for future medical costs, so at least some of the money wasn't earmarked for medical expenses. Under a percentage formula that was not explained, FL demanded $300,000 to include both previous and future costs.

Various lower courts, up to this point, had ruled that future costs could not be claimed. The Supremes ruled otherwise, and that changes things quite a bit.

We need to point out that in all states, people with a lot of disposable cash can't qualify for Medicaid, period. In some states, including NY, people can "spend down" cash for medical expenses until they reach a threshold where Medicaid picks up the rest of those costs. People can also set up "special needs trusts," which remove money from Medicaid financial eligibility consideration, and that money can then be spent for essential purposes such as food, clothing, housing, medical services not covered by Medicaid, and other living expenses. If you get a big settlement, you can put the portion not designated for medical costs into such a trust. If you don't, you'll lose your Medicaid. If you do have one of these trusts, the state can and will take all of it that remains after you die. So no "rich" people are going to get "free Medicaid" out of this.

We should also note that the Medicaid provisions under discussion only let states recover payments from "third parties." Since Medicaid funds come from both federal and state governments, that would seem to prohibit a state from clawing back settlement money that the state itself, as one of the two main parties (the other being the Medicaid recipient), is court-ordered to pay, such as compensation for neglect and abuse in an OPWDD-funded group "home"—though New York has at least tried to do so in the past.

So the problem boils down to how much Gallardo, and others like her anywhere in the United States, can put into her trust. In her case, the difference was about $265,000.

The decision doesn't say whether Gallardo is at home with her parents or in an institution such as a nursing facility, and because she is likely permanently unconscious, we can at least argue that it doesn't matter to her. Medicaid law requires states to pay for nursing facility care, so the continuation of care isn't in question. But what if she was conscious? FL, unlike NY, doesn't have generous Medicaid homecare programs, so she might really need that money to cover additional personal care hours as well as wheelchairs and other equipment and services. NY's homecare isn't as generous as it used to be due to the state legislature's eligibility restrictions for new Medicaid recipients, so special needs trusts are becoming more important here.

The decision was written by Clarence Thomas, by some measures the most conservative Justice on the Court. Notably, only two of the three liberal justices dissented, Sotomayor and Breyer; Kagan agreed with the majority. The debate comes down to the definitions of the words "any" and "available," and to a dispute as to how much the later assignment provisions modify the original anti-lien rule. A cursory reading of the decision suggests that Sotomayor and Breyer are correct in claiming that, taken as a whole, the law only allows recovery of funds already spent on medical services at the time of the damage award.

Sotomayor and Breyer recommended that Congress act to fix this, and we can only agree.

## *Carey v Wisconsin Elections Commission*: Wing-nut judges can't keep us from voting

This Wisconsin case is the first one we've heard of that challenges the notion that people with disabilities can be forbidden to have people mail or deliver absentee ballots for them. We aren't sure how many states have enacted such laws or regulations; we hear a lot of worrying that they might be enacted, but not so many reports that they actually have. But Wisconsin is one that has, and it should provide ammunition for activists in other states who want to attack this problem.

We have to start with *Teigen v Wisconsin Elections Commission*, a crack-brained decision issued by right-wing extremist

Wisconsin Supreme Court judges in response to a lawsuit by "two voters," one named Teigen, who were actually working for the Wisconsin Institute for Law & Liberty, a far-right law firm. At issue was the decision of the WI Elections Commission to let voters put absentee ballots in drop boxes during the 2020 election, due to the pandemic. Teigen alleged that drop boxes are illegal in Wisconsin, and that the Elections Commission didn't have the authority to change election procedures on its own. The Court, in an opinion written by Rebecca Grassl Bradley, didn't consider the second issue because it concluded that Teigen was right about the first point and didn't need to go further. The decision was also full of nonsense about how drop boxes are rife with voter fraud and lead to public distrust of elections.

We should note that in Wisconsin this is not just a disability rights issue; in that state, by law, anybody can choose to vote by absentee ballot without having to give a reason.

Bradley has a long history of opposition to the notion that a government can do anything that a legislature has not specifically told it to do. She came to this conclusion because the state law doesn't specifically allow drop boxes in so many words. Instead, it says that absentee ballots can either be mailed, or they can be "personally delivered to the municipal clerk at the clerk's office or a designated alternate site." The term "personally" might be understood as simply providing a contrast with delivery by mail, not that ***only*** the voter can make that delivery. A reasonable person can be excused for concluding that drop boxes, which, by regulation must be secure and locked, and may be monitored, are "designated alternate sites." A municipal clerk isn't just some bald guy in a green eyeshade and sleeve garters sitting at a desk; in some places in WI, "Municipal Clerk" is an elected political office; in others the clerk is appointed, but except in very small communities, s/he is an administrator who runs an office full of actual clerks who do the actual work. So a reasonable person could also be excused for assuming that when a Wisconsin voter goes to the municipal clerk's office to deliver a ballot, s/he does not actually go up to the clerk and put it into her hand (imagine hundreds of voters doing this in a big city like Milwaukee around election time). Now, we haven't voted in Wisconsin, but we figure it's likely that the actual procedure is for the voter to either hand the ballot to a receptionist in the lobby or drop it into a box labeled "Absentee Ballots" there—yes, a drop box. So only a fool could believe that the law was intended to require absentee ballots to be hand-delivered to a specific high-level public official. But that's what Bradley and her fellow wing-nut judges decided.

Bradley and her associates were affirming, in part, a WI circuit court ruling that upheld Teigen; that lower court also said "an elector must personally mail ... his or her own absentee ballot." To Bradley's credit, she pointed out that the actual law doesn't say anything about whether a person can have somebody else mail their ballot, and she rejected that part of the decision.

If matters had been left there, disabled voters who use absentee ballots could just have had family members or attendants mail them if they couldn't do it themselves. But they were not left there. Instead, the Wisconsin Elections Commissioner, Megan Wolfe, announced that she was interpreting the decision to mean that "As of right now, the voter is the one who is required to mail their ballot." This is strange. It was Wolfe who issued the rules allowing the drop boxes in the first place, and she also said voters could have someone else deliver ballots to them. Wolfe later backtracked on her statement, saying it was up to local election officials to investigate relevant laws and determine what was allowable and what was not.

Bradley's interpretation that drop boxes are illegal under Wisconsin law is absurd. Her extremely literal interpretation of Wisconsin's requirement that people "personally deliver" ballots to municipal clerks is just ignorant, as was Wolfe's first off-the-cuff statement about mailed ballots.

Wolfe's statement and Bradley's interpretation are clear violations of the Help America Vote Act, the ADA, the federal Rehabilitation Act, and a host of other federal civil rights laws. In particular, the 1982 amendments to the federal Voting Rights Act specifically grant disabled voters the right to have a person assist them with voting. All of those federal laws are based on the Constitution's clear statement that Congress can choose to regulate voting in the states, and they all supersede any state laws to the contrary. Even if WI can legally regulate elections for nondisabled voters in the way that Bradley believes and Wolfe said, it cannot do so for voters with disabilities. The state absolutely must let other people deliver ballots, whether to mailboxes, drop boxes, or municipal clerks, for people who can't do it themselves.

That being painfully obvious, it was inevitable that disability activists would sue over this. And so they did. Timothy Carey has muscular dystrophy and can't fill out or mail a ballot himself, and because he is dependent on a ventilator, he can't travel to a polling place to vote by himself; he must always have an attendant nearby in case something goes wrong with the ventilator. Other plaintiffs in the case have similar disabilities, and some of them have given up on voting in person due to pervasive and dangerous inaccessibility features of their polling places.

The *Teigen* decision was issued on July 8, 2022. Wolfe walked back her statement about mailed ballots on July 14. Carey and companions sued on July 22. Their complaint cites Wolfe's earlier remarks and states that "They can no longer fully participate in Wisconsin's absentee-voting system because their only means of doing so is now illegal." That's not literally true, because the court didn't outlaw people other than the voters mailing ballots, but it's close enough.

We'll watch this case closely; we hope the federal district court judge will see the need for a quick response before the November elections, and we'll report back in December. For those of you facing similar issues in other states, here is some advice: First, be sure of your facts. Second, it should be drop-dead easy to win these cases, so don't be afraid to sue if the facts justify it.

### ***USA v Uber*: DOJ *uber* Uber**

We've covered this one before (*Access-Ability* Winter 2021-22, and Summer 2022). Uber charges "late fees" to disabled riders who take more than two minutes to get into a vehicle. People who need to fold and stow wheelchairs, those who are blind and have trouble finding the vehicle, and those who, due to any number of other disabilities, are simply slow in moving, have filed many complaints about this. The fees are added automatically to the fares for which people are billed; the driver can't prevent it. At times Uber has refunded some of these fees, but not consistently.

This is clearly illegal under the Americans with Disabilities Act (ADA), which requires Uber to make reasonable accommodations to customers' disabilities without charging them extra for it. So the federal Department of Justice (DOJ) sued them.

On July 11, 2022, Uber and DOJ agreed to a settlement of the case. Uber continues to deny that it is a transportation company that is subject to ADA rules, and that it discriminated against riders with disabilities. DOJ can reinstate the lawsuit if Uber violates the settlement. Here are the remedies that will be provided to those who complained about Uber wait fees before that date:

There were over 1,000 complainants. All will receive refunds for the wait fees they paid. Also, a $1.7 million compensation fund will be created by Uber to be divided among those complainants who agree to the terms of the settlement. And Uber will create a waiver program for riders with disabilities. Riders who submit a statement indicating that they are disabled in ways that require extra time to board a vehicle will be enrolled in the waiver and will not be charged late fees in the future. (They must do this via a web form; they will have to provide enough detail about their disabilities to show that they need extra time, but they won't have to provide any documentary proof. They don't have to tell the driver they are disabled and Uber won't tell them either.) Those who sign up for the waiver will get a double refund of the wait fees they were charged. The program will be administered by a third-party administrator that has no relationship to Uber.

If you're an affected Uber customer, you should receive emails announcing the settlement and explaining how to apply for refunds and compensation, and how to apply for the waiver. Banner notices about this should also appear periodically in the Uber app.

# NYS Constitution Boldly Goes Where Everyone Else has Gone Before

New York's legislature began a process this year to amend the state constitution's human rights section to prohibit discrimination on the basis of disability, among other categories.

The current constitution's language, from 1938, outlaws discrimination on the basis of "race, color, creed or religion." The new version would add age, sex, including pregnancy and pregnancy outcomes, disability, ethnicity, national origin, and sexual orientation, gender identity, gender expression, and reproductive healthcare and autonomy.

The reasons for most of those categories should be self-explanatory. "Ethnicity and national origin" may not be so obvious. They've been features of discrimination prohibitions for organizations that receive federal funds for a very long time, though they're usually thought of as a way to talk about quasi-racial discrimination, such as "no Irish need apply" or "no Jews allowed" (not all Jews believe that they are just members of a religious group). They're being promoted in New York as a way to rule out discrimination on the basis of immigration status.

Advocates had called for language to address actions that result in unequal experiences among members of the protected groups—so-called "disparate impacts"—whether any intent to discriminate can be proven or not. Earlier bills in both the Senate and Assembly contained such language, but they did not pass. The version that did pass removes that language. We should note that the bill does not specifically say that only "intentional" discrimination is illegal, nor do any federal civil rights laws, but federal courts have interpreted those laws that way using questionable logic, and NY judges tend to follow federal court reasoning in this area.

The amendment also contains this interesting paragraph: "Nothing in this section shall invalidate or prevent the adoption of any law, regulation, program, or practice that is designed to prevent or dismantle discrimination on the basis of a characteristic listed in this section, nor shall any characteristic listed in this section be interpreted to interfere with, limit, or deny the civil rights of any person based upon any other characteristic identified in this section."

The first part of that sentence might prevent courts from finding that efforts to "prevent or dismantle discrimination" that is only evident in its effect, without proof of intent, are illegal. The second part means that being covered by one of these categories doesn't give you the right to discriminate against people in any of the other categories. This might head off claims by religious zealots that laws against discrimination on the basis of sex or gender violate their right to be safe from discrimination on the basis of their religious beliefs. Recent examples include lawsuits that resulted in US Supreme Court decisions that a baker can refuse to provide a wedding cake to a gay couple because his religion opposes gay marriage, and that a company can refuse to include coverage for contraceptives in its health insurance plans for employees on religious grounds, contrary to the requirements of the Affordable Care Act.

Under New York's constitution, the same amendment must be passed by both houses again next year, and then it must be submitted to the voters for approval, before it can take effect. There is some cause for celebration here, but only some. It's quite possible that the voters will reject the proposal when it comes before them. Another good reason to vote in every election.

# What We Told OPWDD This Time

The New York State Office of People with Developmental Disabilities (OPWDD) is working on a new five-year plan. They requested comments from all kinds of people and organizations and we sent them some in July.

As we all know, there is a major shortage of workers in all areas of the "health care" industry, including among OPWDD direct service providers (DSPs). The shortage began before the pandemic and is largely due to the low rates that not-for-profit ("voluntary") service providers receive to provide OPWDD services. Providers can't afford to raise wages for workers on those rates. The pandemic made it worse because so many DSPs stopped working, and when it came time to go back to work a lot of them figured, "Well hey, maybe I can do better elsewhere." We desperately need higher rates to solve this problem; it's the only thing that will work, and this is what just about everybody has been telling OPWDD.

Now, OPWDD doesn't set rates; the state's Department of Health (DOH) does that, as required by the feds. However, OPWDD can recommend rate hikes, and they did so in some sections of the plan. But they didn't do it for programs that employ community-based DSPs.

Much of the plan talks about how they will use money from the federal American Rescue Plan Act (ARPA; Biden's big COVID-response bill from 2021) to provide incentives for DSPs to stay in their jobs. That money will go away after 2024, so it must be spent on one-time things. Retention is a problem; DSPs are quitting in droves because they can get better pay from other employers. But all of those wonderful bonuses won't bring in any new workers. When we try to hire people, we tell them they can get a retention bonus after six months, but that doesn't help. Right now they can get a job in fast food or some other industry for more money than we can offer, and likely after six months they will get a raise as well—not just a one-time bonus.

We are proud of the DSPs who have chosen to work for us, and we value them greatly. We want them to know that we are doing everything we can to improve their wages, but unless the state gives us the money to do that, we're stuck. Our comments included a lot of detail explaining just why the state needs to raise those rates, and we hope OPWDD takes them seriously. We're also sending them to our elected representatives and agency officials to try to get some attention to this problem. If we get any results, we'll let you know.

Another point of interest in OPWDD's plan is proposed reforms for how housing is funded. As we reported a year ago (*AccessAbility* Fall 2021) the NYS Developmental Disabilities Planning Council (DDPC) released a detailed technical analysis of problems with OPWDD's residential options and specific recommendations to fix them. It seems like OPWDD has included some of its ideas in their plan, but the language is vague. It says they want to introduce "portable funding for people who choose to make changes to their residential supports." One way to do that would be to let people continue to get the SSI "Congregate Care supplement" if they leave OPWDD certified housing and move into their own home or apartment. This would amount to several hundred dollars per month that could be used for rent or other costs, potentially. OPWDD seems to be thinking that it will keep control over that money for these folks and dole it out according to their own rules. We think control should be handed to the person, so they can use it for any necessary expense, such as utilities, household goods, food, supplies, or transportation.

The DDPC also pointed out that OPWDD housing subsidies have not been increased in about a decade, despite rapidly rising housing costs. This is one of the areas where OPWDD is actually recommending a rate increase to DOH. But OPWDD should not sit on its hands and wait for that money to come through. It should instead work aggressively to move people out of expensive "supervised" (24/7) IRAs who don't need to be there, and get them into their own homes or less expensive "supportive" IRAs. This would free up a lot of money that's wasted on services that people don't actually need. OPWDD acknowledges that such people exist, but they won't insist that they move. If you have an intellectual disability but your IQ is above 50, and you have no other serious issues such as Prader-Willi syndrome, "medical fragility," or a co-occurring serious and persistent mental illness (like schizophrenia, not just anxiety or the occasional behavioral outburst), you don't need 24/7 support; you can learn to take care of yourself at times when no staff are present. To make this easier, OPWDD should abolish the hard line between supervised and supported IRAs; right now, if you need more than 4 hours of support at home daily, on average, you can't be in a supported IRA, you have to go to a supervised 24/7 facility. That's ridiculous. There's no valid reason why, if you need 5 or 6 hours—or whatever number, short of 24/7 coverage—you shouldn't get those hours in the supported IRA. OPWDD should also stop asking housing providers for permission to place people in their vacancies; providers should be told they must accept all applicants as long as they have room for them, and if they refuse, OPWDD should decertify them and move ***all*** of their money and residents to providers who will accept them. A recent lawsuit could force this to happen; see page 4.

The plan includes feedback from people who say that Care Managers who work with people who don't live in certified settings should have lower case loads, and we agree.

The plan contains promising news on the managed care front. It looks like OPWDD no longer has definite plans to move their services into managed care. Instead, they are commissioning a study from a consultant who will collect information from other states on what they have done with managed care for people with developmental disabilities, and then recommend whether to proceed with that model in NY. Since several states that tried this had bad experiences, we think the result will be that DD managed care will die a quiet death here in a few years.

Finally, OPWDD announced that they have recruited a provider to roll out the "START" crisis response system in our region of the state. START stands for "Systemic, Therapeutic, Assessment, Resources, and Treatment." The model requires an in-person response to any person with a developmental disability who is experiencing a mental health or behavioral crisis within one to two hours, no matter where they are, and a thorough assessment of the person's needs resulting in a comprehensive plan to address those needs and staffing to carry it out. Out-of-home residential respite services ***may*** be provided while the assessment and planning are being done, but only if that would be the least restrictive option likely to succeed. (More information is available here: https://centerforstartservices.org/) The provider is the Young Adult Institute (YAI), located in New York City. We're glad that somebody is finally taking this on, but we told OPWDD that YAI, which has an okay reputation for combined DD and mental health services, is not experienced in serving rural areas, and OPWDD should ensure that local people are involved in their planning and decision making for the program.

When OPWDD releases a final plan, we'll let you know what's in it.

## AbilityNone? AbilityLost?

AbilityOne is a federal program that requires certain federal contractors to purchase goods and services from sheltered workshops. It was started in 1938, after World War I generated a lot of disabled veterans who were having trouble getting jobs, and in a time when most good jobs in urban areas were in manufacturing facilities. The AbilityOne procurement program worked hand-in-hand with another federal program, introduced at about the same time, that allowed sheltered workshops to pay less than minimum wage to their workers. The idea at the time was that ordinary employers simply wouldn't hire disabled people, and especially not during the tail end of the Great Depression, so if they were to get jobs at all, it would have to be with "special" programs that received financial incentives to hire them. At the time, people with intellectual disabilities weren't really in the picture at all; almost nobody believed they could do useful work.

The years after World War II brought an even larger group of disabled veterans to the job market, and employers began seeing hiring disabled veterans as a patriotic duty and a way to address worker shortages in a booming economy. Fewer war veterans had to settle for sheltered work. But then there arose a movement among the families of people with intellectual disabilities to get them out of institutions and into some kind of employment. Gradually, this group came to predominate in sheltered workshops because ordinary employers wanted no part of them.

Jobs that require rapid repetitive motion aren't a good match for people with intellectual disabilities or physical disabilities like cerebral palsy; they do better in service, office, or other types of work, but at least these workshops could keep them busy. But then manufacturing began to decline in the US, and the amount of available work in these facilities began to dry up. More and more, their workers sat idle for part of the day. The only things that kept these workshops going were the subminimum wage law and the federal contract set-asides. Without them, the small amount of remaining work they had would likely be sent overseas. Meanwhile, evidence grew that people with intellectual and other disabilities can work more productively, and make more money, in other types of jobs, and more employers began hiring them. Very few remain in sheltered workshops (AbilityOne only covers about 40,000 people nationwide), and most of them are there only because overprotective family members refuse to let them take advantage of better opportunities in real workplaces.

Advocates have been campaigning against the federal subminimum wage program for decades, and they finally won a victory in July of this year. Effective October 19, 2022, workshops operating in the AbilityOne program will no longer be allowed to pay subminimum wage.

Well, that's the short version. The long version is, the rule takes effect for workers on new contracts that begin, or when existing contracts are renewed, after that date. Also, workshops can request a one-year extension before they must begin paying at least minimum wage. AbilityOne employers are still segregated sheltered workshops; by law at least 75% of so-called "direct labor" hours of their work must be done by people with disabilities. "Direct labor" means the actual work of the facility; this creates an incentive to hire nondisabled people as supervisors and administrators, keeping even productive people with disabilities at the bottom of the wage scale.

AbilityOne requested comments on this plan last fall, and STIC sent ours in, along with over 180 others, nearly all of whom supported the new rule. Although the war to end unfair exploitation of disabled workers continues, this is a big win on that battlefield.

## Miscellaneous News and Notes

### DOH Delays Independent Assessor Again

The NY State Department of Health announced in June that it would delay implementation of the new "Independent Assessor" for personal care services (including CDPA) for two categories of people until October 1, 2022. The categories are: non-managed care "Immediate Need" requests that go to your local DSS office, and "Expedited" mainstream managed care requests. The original start date was July 1. Looks like they still haven't quite figured out their staffing issues.

## Congress May Ban Electric Shock Devices

Congress needs to pass a big bill this year, involving the Food and Drug Administration (FDA), that would ban the Rotenberg Center's use of electric shock devices as punishment. There are versions of the bill in both the House and Senate, and both have sections that would ban electric shock punishment devices. The Senate version contains this language: "Adverse conditioning devices, including electrical stimulation devices, that apply a noxious electrical stimulation to an individual's skin intended to reduce or cease self-injurious or aggressive behavior are deemed to be banned devices, … without the need … to promulgate a regulation with respect to such devices." The Senate bill, the "Food and Drug Administration Safety and Landmark Advancements Act of 2022" (FDASLA), was put on the calendar for action on July 13 but has not yet come to the floor. The House has already passed its version, which contains some additional language: "A device that is banned for one or more intended uses is not a legally marketed device … when intended for such use or uses." This fixes the problem created when a federal court ruled that the FDA cannot ban so-called "off-label" uses for a type of device that it approves for other uses (see *AccessAbility* Fall 2021).

You may want to contact your Senators and urge them to pass their version of the bill (S.4348), and then support adding the House language when it comes time to reconcile the two bills.

## Upstate Managed Care Plans Get Homecare Rate Increase

We are hearing that Medicaid managed care plans serving upstate New York will get a whopping $8.00 per hour rate increase beginning October 1. This is intended to cover the $2.00 minimum wage raise for homecare workers that takes effect on that date, plus the inevitable increase in fringe benefit costs (calculated as a percentage of wages) that will come along with it. Don't get too excited yet. For STIC, this only affects CDPA workers for people in Medicaid managed care. There is no rate increase for those in fee-for-service Medicaid, about 1/3 of the people we serve, or for those in the OFA EISEP program. In order to be fair, we would try to use any flexibility in this rate increase to spread the money around among all those workers if allowed; we don't know that right now.

There is no official word that DOH will order plans to pass through any specific amount of the increase to service providers like STIC. There have been serious problems with this issue in the past. However, some time ago DOH told the federal Centers for Medicare and Medicaid Services (CMS), which had to approve the use of Biden's American Rescue Plan Act money for this project, that they would add language to the plans' contracts requiring them to pass through funds for homecare worker wages to providers. In any case, the providers now know how much money is available and can use it in negotiating rates with the plans to take effect in October.

## Federal Health Emergency Extended to October 13, 2022

The federal public health emergency first announced when the COVID-19 pandemic began in March 2020 has been extended again, this time to October 13, 2022. By law, these federal emergencies can only be renewed for 90 days at a time. The feds could cancel the emergency before the end of that period if they chose. The scuttlebutt is that they will not end it before January 2023. Much suffering and unhappiness are widely expected when the emergency ends because it will also end the moratorium on states cutting people off Medicaid or reducing eligibility or service options for that program. That moratorium is the only thing that is keeping NY from implementing the new Personal Care/CDPA eligibility "ADL minimums" that were enacted with the 2020 budget (see *AccessAbility* Summer 2020). But no politician wants to deal with the inevitable blowback from that during an election season.

## Federal Websites Dinged for Inaccessibility

In 2021, federal websites were tested for accessibility compliance. It was found that 30% of the most highly utilized websites' home pages were not accessible, and 48% of the sites had accessibility problems on at least one of their three most popular pages.

All federal websites are supposed to be accessible under the federal Rehabilitation Act. The federal Department of Justice (DOJ) is supposed to keep track of agency website compliance and issue reports every two years. The last one came out in 2012, and it found only so-so compliance with requirements to continuously improve electronic accessibility across all agencies. Why did they stop producing these reports? Apparently nobody knows.

So several US Senators wrote a letter to US Attorney General Merrick Garland to find out (you can read the letter here: https://s3.documentcloud.org/documents/22076332/senators-letter-doj-section-508.pdf). If they get an answer, we'll tell you about it.

In the meantime we can just imagine how this news has been received by those campaigning to make it harder for people to sue private companies for inaccessible websites—companies for which DOJ recently issued guidance that it doesn't follow itself.

## ACCES-VR Dinged (Again) for Accomplishing Little

In March 2022, NY State Comptroller Thomas DiNapoli released a report on his audit of NY State's vocational rehabilitation agency for people with disabilities, ACCES-VR. The audit found that the number of job placements arranged by ACCES-VR declined by almost 30% between 2019 and 2020; that only 8% of all ACCES-VR clients achieved an "employment outcome" (held at least a part-time job in an integrated setting that paid at least minimum wage for at least 90 days) in 2020 when the agency's goal was 55%; and that the average wage paid to ACCES-VR clients was only 42% of the average wage paid in the state as a whole.

The pandemic could explain the decline in job placements (the data is from April 2017 through December 2020), but those other numbers reflect incompetence and indifference. The agency misses deadlines for eligibility determinations, development of service plans, and especially, annual reviews of progress on those plans, many of which are vague and incomplete. In other words, the work isn't clearly defined, it isn't getting done, and nobody is paying attention.

This is far from the first time this agency has received unfavorable reviews, from both the NY Comptroller and the federal Rehabilitation Administration that provides most of its money. Likely the results will be similar; the agency will respond with a promise to improve; that response will be filed; little will change; and years later a new report will find similar problems.

# STIC NEWS

## Happy Direct Support Professional Appreciation Week!

By Lucretia Hesco

Every day, and especially this month, we celebrate and honor the support that STIC DSPs provide to people with disabilities. The week of September11-17th is officially proclaimed to be Direct Support Professional Week by NYS.

We want to extend an extra special thanks to our long term direct support professionals. We sincerely appreciate your hard work year after year…Thank you for your many wonderful years of service!

**15+ Years of Service**

Greg Baker
Kathi Ross
Frank Anzalone

**10+ Years of Service**

Scarlett Humphry
Brooke Akam
Lillian Hiatt
Rose DiRenzo

**5-9 Years of Service**

Danielle Brown
Nicole Farley
Debra Heggelke
Barbara Ellerson
Deborah Overfield
David Stewart
Sandra Madison
Michele Stockton
Angelica Carrozi
Lisa Depofi
Brenda Jewell-Freeman
Cassandra Furgeson
Shawnte Smith

**5-9 Years of Service**

Shamika McIntosh-Gerville
Maria Kellogg
Lisa Tripp
Nancy Price
Taylor Ray Carey
John Weaver
Tammy Ritter
Doug Lozinak
Claudine Spencer
Courtney Wright
Josie Malenda
Natalie Sterns
Danielle Chapel
Eric Boateng
Erica Dewing
Nadine Lamont
Doug Bacon
Mary Johnson
Robert Chauncey
Robert Greene
Carian Larsen
Stephen Requa

**1-5 Years of Service**

Cheryl Benninger
Anna Yagaza
Joshua Presley
Joy Dirig
Katie Harvey
Kacy Cox
Rebecca Doyle
Gigi Marcus
Maranda Reynolds
Tammy Warner
Joshua Fraser
Brandon Sheppard
Shannon Dodge
Austin Molinari
Bethany Gardner
Abigail Sisson
Nicole Manderville

**Welcome to our newest DSPs!**

Brittany Thomas
Melissa DeWalt
Joseph Farrow
Mary Youngfrau
Emma Bensen
Kimberly Schrader
Kristen McPeak

*"Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has."*
- Margaret Mead

Direct Support Professionals

# Full Time MSW Wanted!

By Maria Dibble

*Counseling for Children and Families with Mental Health and Developmental Disabilities*

For the last two decades, STIC has been very concerned about the lack of services for children who are dually diagnosed with mental health and developmental disabilities, as well as the shortage of support for their families. These issues disproportionately affect children who live in poverty, and are of minority status. With the generous award of funds from the United Way of Broome County, we are now able to actively contribute to the solution with a new program, "Children and Families Mental Health Counseling".

STIC is looking for a full-time (35 hours/week) counselor who has a Masters in Social Work (MSW), and who is either licensed (LMSW) or will be licensed within two years, to provide counseling services to children with mental health needs and their families. Emphasis will be placed on school-age children 5 to 21 years old with co-occurring (dual) mental health and developmental disabilities. The program will also serve other children with mental health needs within this age range without a dual diagnosis, if space is available, but the major focus will be on those with the most critical needs. The goals for children are to increase emotional stability, socialization skills, enhance or maintain relationships and friendships, improve educational outcomes, develop coping mechanisms for stress and anger, and improve their sense of well-being. Families will be eligible for counseling services to reduce stress, improve communication skills, learn tactics to cope with behavioral issues, receive emotional support, and acquire information about the range of community supports available. To ensure needs are met, referrals will also be made to other programs (including those not offered by STIC) such as SNAP, DSS, and food pantries, and staff will assist with facilitating connections to the range of community-based offerings available. The priority for the program is to serve individuals and families living on Binghamton's north and east sides, in central Johnson City, and the Union-Endicott School District (with special focus on the poorest school in the district, Charles F. Johnson Elementary School), as well as the more rural communities of Broome County.

We've been advertising the position since mid-June, and we are eager to find a creative and energetic person who can get the program up and running as quickly as possible. Please send resumes to apply@stic-cil.org. The job description is posted on our website, www.stic-cil.org.

# Psychotherapy Services are Open

By Maria Dibble

STIC is pleased to announce that we've hired Krystal Baker, (LMSW) as a new counselor at STIC. She replaced Charles Kramer, who retired in 2021 after 35 years with us. She has openings to provide mental health counseling to people with all types of disabilities, as well as their family members. We do not have a formal referral process. Individuals can call (607) 724-2111 Ext. 309 to contact her. We prefer that individuals wanting the service contact us directly, though we will take referrals from Care Managers and others. This position is separate from the new program for children with dual diagnoses (see above).

# Call Your Mummy!

By Todd Fedyshyn

Xscapes and STIC are proud to share our exciting new plans to build a new escape room: "Last Pharaoh Standing; the Life and Legacy of Cleopatra". This will be our fifth game for our successful escape room fundraiser "Xscapes" here at STIC and will open early in the 2023 season.

Cleopatra was queen of the Ptolemaic Kingdom of Egypt from 51 to 30 BC and was the last active ruler of the Egyptian empire. She was a member of the Ptolemaic dynasty, and a descendant of its founder Ptolemy, a Macedonian Greek general and companion of the amazing Alexander the Great. Your journey will involve learning the history of her life, and hidden secrets and gems discovered in her tomb by your archaeological team. Valley of the Kings will also be getting some updates and our plan is to make "Valley of the Kings" Part 1 and "Last Pharaoh Standing" Part 2 of the overall Egyptian experience here at Xscapes, the Southern Tier's premiere Binghamton Escape Room.

Xscapes is also proud to announce a partnership with Binghamton University to have projects completed by students to help increase the tech in our rooms while challenging students to be creative thinkers.

Please also don't forget that the holiday season is right around the corner, so call for your holiday gift of Xscapes Bucks today. Xscapes Bucks, the gift that keeps on giving. Please feel free to book an escape room at www.Xscapes-STIC.com or call (607) 760-3322 for more information.

# Voting Information and Encouragement

Election Day is Tuesday, November 8, 2022. Below is a lot of specific information about how to vote, various deadlines, and more thanks to the League of Women Voters. We'd like to emphasize a few points:

If you vote in person, you should get up early, go to the polls early, and be prepared to stand in line. Bring refreshments and warm clothing, and if you expect a really long line, and you have a camp stool, bring it. Lines aren't typically very long in STIC's service area on Election Day, but they can be at the limited number of early voting sites, and people all around the state are reading this.

New York has pretty liberal voting laws, but the pandemic rules are no longer in effect. You need a valid reason to use an absentee ballot (see below). Some of the other rules concerning challenges for "incorrect" ballots are also gone, and the voters did not approve a referendum to allow same-day voter registration.

If you live in a state that has oppressive voter laws, especially new laws that make it easier for politicians to invalidate election results, we urge you to vote in person on Election Day even if you qualify for an absentee ballot or early voting. The media in those states need to see that large numbers of people have shown up to vote, and you need to avoid giving wing-nut right-wing politicians support to indulge their fantasies that absentee voting leads to fraud. That is very sad, but this is how you need to think right now. If enough of you show up and vote, you can get rid of these clowns and fix your election laws—but that comes later.

If you have a disability and your state is trying to claim you can't have somebody else mail or deliver your ballot, that is absolutely illegal (see page 6). If such rules are on the books you need to organize ***RIGHT NOW*** and file lawsuits in federal court to get them removed. Federal judges should be sympathetic to requests for immediate injunctions due to the short amount of time between now and Election Day.

And finally: PLEASE!! Vote no matter what. **Vote**. Tell everybody you know, in the strongest possible terms, that they need to vote. ***No excuses*** for not voting are as important as preserving our freedom from authoritarian government.

**For whom/what will I be voting on in the 2022 election?**

- Governor, Lt. Governor, Attorney General, and Comptroller
- US Senate (one seat; currently held by Charles Shumer-D)
- All members of the United States House of Representatives
- All NY State Assembly Members
- All NY State Senators
- Some village, town, county, special districts

**To vote you must:**

- be a United States citizen
- be 18 years old by November 8, 2022 (16 and 17 year olds may pre-register)
- live at your present address at least 30 days before November 8, 2022
- not be currently incarcerated for a felony conviction
- not be adjudged "mentally incompetent" by a court
- not claim the right to vote elsewhere
- be registered to vote

**How do I register?**

- Online through NYS Department of Motor Vehicles website, https://dmv.ny.gov/more-info/electronic-voter-registration-application (must have a NYS driver's license, Learner Permit or Non-Driver ID)
- In person on any business day at your county board of elections (BOEs) or any state agency participating in the National Voter Registration Act (including State University and City University campuses); see list of agencies here: https://www.elections.ny.gov/NVRA.html
- By mail by completing a voter registration form available at BOEs, libraries, town halls, post offices and the League of Women Voters, and online at: (https://www.elections.ny.gov/NYSBOE/download/voting/votereg-form-eng-fillable.pdf)

**How do I make sure I am registered to vote?**

- Visit Voter Registration Search page on the NYS Board of Elections website, https://voterlookup.elections.ny.gov/
- Call your county BOE

**Where do I vote?**

- Check postcard sent by county BOE prior to election with polling site location, dates of election and more
- Visit Voter Registration Search page on the NYS Board of Elections website, https://voterlookup.elections.ny.gov/
- Call your county BOE

**Three ways to vote:**

- Vote in person on Election Day at assigned polling place
- Submit absentee ballot application and vote by absentee ballot. If you apply for an absentee ballot and decide to vote in person, in-person vote will be by affidavit ballot.
- Vote early in person during nine days leading up to election days.

**Countdown to Election Day 2022**

- Oct. 14 – last day to postmark voter registration form, or register in person at a BOE office
- Oct. 24 – last day to apply for absentee ballot using online portal
- Oct. 24 – last day to postmark application or letter of application for absentee ballot
- Oct. 29 – Nov 6 early voting is available
- Nov. 7 – last day to apply in person for absentee ballot
- Nov. 8 – last day to postmark absentee ballot; must be received by the county BOE no later than Nov 15th: MAIL EARLIER!
- Nov. 8 – last day to deliver absentee ballot in person to your county BOE or to poll site by close of polls

# Parks & Recreation without Ron Swanson

By Chad Eldred

Generation X will debate whether the decade of the 80s or the 90s represent the peak of human civilization. Both decades are remembered for their robust pop culture. If you don't believe me, attend local trivia night, and count the references to the pop culture from those decades. I do not pretend to hold the answer as to whether hair metal was superior to grunge. However, there is one thing that I am certain of. As a Gen-X kid working at the boat house at Dorchester Park during the 90s, I wasn't thinking about accessibility. Neither was the Broome County Parks Department. Adapting the park to patrons with disabilities was left to the patrons or, if they were lucky, willing family members and friends. While those of us who worked at the park would lend a hand or do what we could, there was certainly no concerted effort to incorporate accessibility into our jobs or the park experience. It was going "above and beyond" for a park employee to concern themselves with such matters.

The 90s were a long time ago and the world has changed. Change is a funny word; some consider it inherently positive, while others shun change, considering it a process of decay. In my view, both are wrong. Change is a constant, like gravity. You can work with it, or you can simply let it act on you.

During the spring I was at Dorchester Park for a bike ride. At the conclusion of my ride the park manager, Rob Totten, and assistant manager, Sarah White pulled up alongside me in the bright orange park utility vehicle. After chatting for a moment or two, Rob said they had to get back to work and gestured towards a piece of torn up ground in the distance. I asked him what they were working on, and he replied with a cryptic comment that contained no real answer to my question. This is Rob's sense of humor, as he knows I'll find an answer, but he seems to enjoy making me work for it. As it turned out he and Sarah were excavating the site of an accessible playground. For many in the community, they only heard the word playground when they learned this news. However, for families of children with disabilities, this meant an opportunity for their child to be included. To see the smile of a child consumed by the moment as they romp around the playground on summer days that seem to last forever. This was huge news to me. Dorchester Park was leaving the dark ages of accessibility.

A few months later, after I had solved the mystery of what Rob and Sarah had been working on, I noticed another change during a park visit. A new dock had been installed near the boat launch. The dock was very different in appearance from the typical docks that I've grown accustomed to over the years. There was also freshly poured concrete extending from the existing pathway to the newly installed dock. I noticed Rob in the distance on the park's bright orange park utility vehicle. The bright orange color makes it difficult for managers to hide. I'm not sure if that's accidental or by design. This time I wasn't accepting any of Rob's evasive retorts. I was going to press for an answer. Turns out, I didn't have to press very hard. Rob was more than happy to talk about the accessible dock. Yes, an accessible dock designed to allow those with any sort of mobility challenge to board a vessel with greater ease and safety than a traditional dock. I quizzed Rob a bit more and asked him who was allowed to use the dock. His response was simple, yet perfect: "Anyone who wants to."

I am thrilled to see that at a place where I have spent so much of my life, change is being embraced and leveraged for the good of those with disabilities. Dorchester is a place that holds many memories for me and seeing the intersection of my personal and professional lives has unique appeal. The changes are not occurring by accident. It is the reflection of decades of work done by the disability rights community. Advocates have used change as a tool to craft an accessible world and we see this every day if we have the willingness to look for it. The core tenets of accessibility are now embedded in the process of building and design. Today, recreation management majors are exposed to accessibility concepts and their importance, through modern curriculum and teaching at the university level. Is there room for improvement? Of course. But thanks to the work of advocates in prior decades, the conversation has a different tone and begins at a different starting point. In many cases, advocates do not have protracted conversations extolling the virtues of accessibility. Their audience has already bought in. Advocates today have the luxury of jumping ahead to the fun part: collaborative creation. Many in the field of parks and recreation are not only receptive to accessibility, but eager to bring their respective parks to the forefront of accessible design. It is simply a matter of working together to incorporate as many accessible features as possible with the resources available. I am excited to see what more can be done. Everyone should have the opportunity to create park memories for themselves.

# Vacation & Recreation Tips

Looking for more on accessible recreation in New York? Check this out: https://www.iloveny.com/things-to-do/accessibility/#.Yu5jNW-6b88.mailto

Six Flags is now "autism certified", whatever that means: https://www.disabilityscoop.com/2020/02/07/six-flags-now-autism-certified/27779/

The US Department of Transportation (DOT) announced an "Airline Passengers with Disabilities Bill of Rights": https://www.transportation.gov/airconsumer/disabilitybillofrights

There isn't really anything new there, but that website puts all of the relevant information in one easy-to-find place. Also, DOT recently said it's working on a new rule to require airlines to allow wheelchair users to stay in their own chairs on airplanes. It's in the early stages, and it might encounter opposition from the airlines, but this looks like a positive step. This follows the March 2022 issuance of a rule requiring accessible bathrooms on more planes.

# First Ward Action Council Has Accessible Housing Vacancies

The locations are: 10 Edwards Street, 12 Mather Street, 15 Mather Street, 42 North Street, 43 North Street, and 95 Walnut Street. This is "affordable housing" for people whose incomes range between 50% and 60% of the Area Median Income: Rents: $450/month for a studio; $550 or $615 for a one-bedroom, $733 for two bedrooms. These units are fully-renovated and smoke-free, and accessible apartments are available beginning in November.

Applications will be accepted through October 7, 2022. Pick up an application at First Ward Action Council, 167 Clinton St. in Binghamton, or online at firstwardaction.org. An application lottery will be held at 10:00 am on October 24.

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All donations are tax-deductible. Contributions ensure that STIC can continue to promote and support the needs, abilities, and concerns of people with disabilities. Your gift will be appropriately acknowledged. Please make checks payable to Southern Tier Independence Center, Inc.

**THANK YOU!**

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