

The Housing Crisis for New Yorkers with Disabilities

November 17, 2011

There is a statewide housing crisis for New Yorkers with disabilities. There is little housing that is accessible to people with disabilities, even less that is also affordable, and still less that is also integrated in the community. The lack of affordable, accessible, integrated housing options is the most significant barrier to people with disabilities living independently in the community.¹

⇒ **New Yorkers with disabilities living on extremely low, fixed incomes cannot afford independent housing that is integrated in the community without an ongoing rental subsidy or deeply subsidized affordable housing.**

In 2009, New York had the second largest population of non-elderly adults with disabilities receiving Supplemental Security Income (SSI) benefits with 353,115 SSI recipients aged 18-64. In 2010, there was no place in the country where a person with a disability receiving SSI could afford to rent modest rental housing without a permanent rental subsidy. In New York, individuals with disabilities need an average of 141% of SSI to rent a one-bedroom apartment.²

⇒ **Thousands of New Yorkers with disabilities are living in institutions or other segregated settings because of the lack of affordable, accessible, integrated housing options in the community.**

There are currently 22,248 New Yorkers living in nursing facilities who have indicated they wish to return to the community.³ If those nursing facility residents who are Medicaid eligible⁴ were transitioned to the community, the State would potentially save \$129 million annually in the non-federal share of Medicaid.⁵

In addition to implementation of recommendations of the Medicaid Redesign Team, New York plans to transform the developmental disability service system through the implementation of the *People First* 1115 Medicaid waiver. The New York State Office for People with Developmental Disabilities (OPWDD) identified the need to further reduce its

¹ *Olmstead: Reclaiming Institutionalized Lives*, National Council on Disability, September 29, 2003

² *2010 Priced Out: The Housing Crisis for People with Disabilities*, Technical Assistance Collaborative Inc., June 2011.

³ Center for Medicare and Medicaid Services Minimum Data Set, 2010 3rd quarter Q1A report.

⁴ This includes 63.5% or 14,127 individuals who are Medicaid funded.

⁵ *Proposals to Reduce New York State Spending and Promote the Independence and Integration of Seniors and People with Disabilities: Fiscal Analysis*, New York Association on Independent Living and the Center for Disability Rights, January 7, 2011.

reliance on institutions in its draft Statewide Plan for 2011-15.⁶ There are approximately 40,000 individuals with developmental disabilities in OPWDD's housing programs, 37,000 of whom are living in congregate settings.⁷ In addition, in 2011 there were 1,313 individuals living in developmental centers or special units who would be better served in the community.⁸ OPWDD's goal, according to the proposed State Plan, is to transition all individuals from developmental centers and maintain about 300 transitional specialized units statewide. OPWDD has made significant efforts with the Home of Your Own Program, a HUD approved housing counseling program, but more individuals with developmental disabilities should have the option to choose independent rental housing integrated in their community, where they can receive individualized services appropriate to their needs and preferences.

⇒ **Older New Yorkers need affordable, accessible, integrated housing options to avoid unnecessary institutionalization.**

New York faces an aging baby boom population that overwhelmingly prefers to age in place. According to AARP's latest survey of people aged 50 and over in New York, 87% say it is extremely or very important to be able to stay in their home as they get older, and another 10% say it is somewhat important.⁹ Assisted living, which is considered to be a form of "supportive housing" for older New Yorkers, costs an average of between \$30,708 and \$40,452 a year. AARP research has found that of New York residents aged 50 and over, 52% are not at all or not very confident about being able to pay for assisted living. While the State does pay for assisted living care through Medicaid, it is very limited, both in terms of eligibility and the number of residents who can receive Medicaid coverage in this setting.¹⁰ Older New Yorkers also need access to affordable, accessible, housing options integrated in the community where they can receive Medicaid-funded home and community based services and supports that they choose and need.

⇒ **People with disabilities represent over 40% of the homeless population.**

According to the U.S. Department of Housing and Urban Development's 2008 Annual Homelessness Assessment Report, 17.7 percent of the adult U.S. population has a disability, whereas an estimated 42.8 percent of sheltered homeless adults have a disability. New York's unsheltered chronic homeless population in 2009 was 4,280, which includes people with serious mental illness, chronic substance use disorders, or chronic medical issues, and who are homeless repeatedly or for long periods of time.¹¹

⁶ *Statewide Comprehensive Plan 2011-2015*, New York State Office for People with Developmental Disabilities, October 1, 2011.

⁷ As noted by OPWDD staff at the MRT Affordable Housing workgroup's meeting on October 24, 2011.

⁸ *Statewide Comprehensive Plan 2011-2015*, New York State Office for People with Developmental Disabilities, October 1, 2011.

⁹ *Voices of 50+ America: Dreams and Challenges: New York*, AARP Research & Strategic Analysis, February 2011 <http://www.aarp.org/personal-growth/transitions/info-02-2011/voices-america-dreams-challenges.html>

¹⁰ *Long Term Care: An AARP Survey of New York Residents Age 50+*, AARP, March 2007.

¹¹ *State of Homelessness in America*. National Alliance to End Homelessness: Homelessness Research Institute, January 2011.

Barriers to Creating Affordable, Accessible and Integrated Housing For People with Disabilities

The mission of the Medicaid Redesign Team Affordable Housing Workgroup includes evaluating the availability and adequacy of “supportive housing” programs for the purpose of assuring that individuals who need services and supports are neither inappropriately institutionalized nor denied necessary care and services in the community, with “supportive housing” defined broadly as any combination of market rate or subsidized housing and services that will meet individual needs. New York’s current models of “supportive” housing primarily target individuals with psychiatric disabilities, substance use disorders, those living with HIV and AIDS, and homeless individuals. For each of these populations, an existing State agency targets resources and develops policies to ensure their complex needs are met. No equivalent State agency oversees the development of community-based services and housing to meet the needs of people with physical, sensory and cognitive disabilities who wish to live independently in the community, resulting in an absence of a coherent State disability housing policy for these populations.

The creation of affordable, accessible and integrated housing, which is not attached to services but allows individuals to choose services and supports available in the community to support fully integrated community life, must drive the development of a State disability housing policy. Affordable, accessible and integrated housing will best meet the needs of people with physical, sensory and cognitive disabilities of all ages, but complex barriers exist related to service system silos, lack of affordable housing policy that takes their needs into account, and other factors which must be identified in order to be overcome.

A State disability housing policy must be guided by the integration mandate of Title II of the Americans with Disabilities Act, as affirmed in the Supreme Court’s *Olmstead* decision. The State must provide long term services to individuals with disabilities “in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”¹² Lack of access to affordable, accessible, integrated housing is the most significant barrier to people with disabilities and older New Yorkers, who wish to transition from institutions or other segregated settings or who are at risk of institutionalization, who would prefer to live independently in the community.¹³ While New York has made progress in moving people with disabilities from segregated to integrated settings in the 10 years since the landmark *Olmstead* decision, far too many people remain in institutions and other segregated settings when they can be more appropriately served in the community. The State’s Most Integrated Setting Coordinating Council (MISCC), which was created in 2002 to bring governmental agencies together to work collaboratively on implementing the integration mandate, has been largely ineffective and has not yet developed an *Olmstead* plan as the enabling statute required. Without a clearly defined *Olmstead* plan, the health and housing needs of people with physical, sensory and cognitive disabilities are neglected by State policy makers. Instead, this large population must navigate multiple complex service systems to meet their needs.

¹² *Olmstead v. L.C.*, 527 U.S. 581 (1999), 28 CFR 35.130(d).

¹³ *Olmstead: Reclaiming Institutionalized Lives*, National Council on Disability, September 29, 2003.

The disability rights and Independent Living Center communities have worked for decades to help policy makers identify and address the health and housing needs of this population. These communities, which are controlled by and reflect the self-identified needs and concerns of people with all types of disabilities of all ages, has had notable successes, including successful advocacy to create the Nursing Home Transition and Diversion (NHTD) Medicaid Waiver and its housing subsidy. The NHTD waiver's implementation, however, has been hampered by overly bureaucratic processes which focus on safety, instead of on ensuring individuals in institutions or at risk of institutionalization can live in freedom. The State Department of Health estimated there would be 5,000 participants in the waiver by the end of three years, in August 2010, but as of December 2010, waiver enrollment was just 674 individuals. This lag in enrollment is not due to lack of need or problems with the NHTD waiver model, but rather with implementation issues at the State level.¹⁴ While NHTD waiver enrollment has since expanded incrementally, huge changes in the long term care system are now underway which will impact this waiver and the essential housing-related and other services it provides. Whether the advent of Managed Long Term Care will end waiver services such as home modifications and assistive technologies and, critically, the NHTD waiver housing subsidy, is unclear.

Ending the housing crisis for New Yorkers with disabilities of all ages that require long term services and supports in the community by increasing affordable, accessible and integrated housing is a complex undertaking which faces many barriers. These include:

Barriers to affordable housing

- Poverty is the biggest barrier to affordable housing for people with disabilities of all ages. The poverty rate for people with disabilities in New York State is 17% higher than for nondisabled New Yorkers.¹⁵ Working age people with disabilities in the State have a 34.5% employment rate, resulting in an employment gap between people with and without disabilities of 40.9%. Most people with disabilities live on extremely low, fixed incomes that fall well below 30% of Area Median Income (AMI), making it impossible for New Yorkers with disabilities to afford much of the housing that is considered by policy makers and housing developers to be "affordable." As previously noted, without affordable housing assistance, individuals with disabilities would need an average of 141% of Supplemental Security Income (SSI) to rent a one-bedroom apartment in New York State.¹⁶
- Even when affordable housing assistance is available, people with disabilities are often discriminated against by landlords and realtors. According to the U.S. Department of Housing and Urban Development (HUD), housing discrimination complaints based on disability are the most common type of fair housing complaint received.¹⁷ New Yorkers with

¹⁴ *Recommendations for Improving New York's Nursing Home Transition and Diversion (NHTD) Medicaid Waiver*. Prepared by the New York Association on Independent Living and the Center for Disability Rights. January 26, 2011.

¹⁵ *Disability Matters*, Center for Independence of the Disabled New York, 2011.

¹⁶ *2010 Priced Out: The Housing Crisis for People with Disabilities*, Technical Assistance Collaborative Inc. (TAC), June 2011.

¹⁷ *2009 Worst Case Housing Needs of People with Disabilities: Supplemental Findings of the Worst Case Housing Needs 2009: Report to Congress*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, March 2011.

disabilities living on fixed incomes are routinely denied access to affordable, accessible, integrated housing because of the source of their income, including housing subsidies. Programs such as Section 8, Shelter Plus, and the subsidies attached to Medicaid Waivers such as the NHTD and Traumatic Brain Injury (TBI) Waivers, are intended to allow people to obtain affordable, accessible and integrated housing. However, prospective tenants are often rejected by landlords and realtors because they do not want to work with a government program, even though the tenant thereby would have the means to pay the rent.

- The State and many localities have the capacity to amend their Administrative Plans with HUD to set aside a percentage of Section 8 Housing Choice Vouchers for people in nursing facilities or at risk of institutionalization, but few communities have done so. One exception is the Municipal Housing Authority of the City of Yonkers (MHACY) which, despite having a closed waiting list, sets aside 5% of its vouchers for applicants who are scheduled to be discharged from a long term medical care facility and who lack affordable and accessible housing. The MHACY has partnered with local advocacy groups, including Independent Living Centers, to assist with identifying eligible applicants, locating suitable housing accommodations, and assisting the applicants with their ongoing needs to assure their successful participation in the Housing Choice Voucher Program.¹⁸ One hundred to 125 Section 8 Vouchers are available in Yonkers to people with disabilities of all ages leaving institutions per year.
- The TBI and NHTD Medicaid Waivers provide housing subsidies to over 1700 waiver participants combined.¹⁹ These subsidies are critical to ensuring waiver participants can live independently and fully integrated in the community. As the State transitions to a Managed Long Term Care System, which is expected to include waiver participants in the near future, these housing subsidies are at risk. Housing subsidies must be maintained and expanded to ensure people who need long term services and supports will not end up in nursing facilities because of a lack of affordable housing.
- The State could more efficiently and effectively utilize federal funds to further advance disability housing policy and the implementation of *Olmstead*. For example, New York State receives an annual allocation of HOME block grant funds from HUD which, in 2011, equaled \$180.6 million. One of the options the State has for allocating HOME funds is Tenant Based Rental Assistance (TBRA). TBRA can fund both rental assistance (e.g., a voucher) and security deposits, and allows for preference to be given to people with disabilities transitioning from institutions to the community. Yet since 1992, only 418 New York households have received TBRA.
- In order to prioritize developing housing that is affordable to people with disabilities living on extremely low incomes, below 30% AMI, affordable housing developers must face a complex system using multiple layers of financing with varying requirements.

¹⁸ *Housing Choice Voucher Program: 2009 Administrative Plan*, The Municipal Housing Authority for the City of Yonkers.

¹⁹ *Department of Health MRT Affordable Housing Workgroup Presentation*, October 24, 2011.

- Many local planning practices discourage accessible, affordable housing development. These include: restrictions on building height, density and type, parking requirements and fees/taxes structured to favor fewer, more expensive units.²⁰
- Many barriers to affordable housing for people with disabilities are the same as those affecting the broader community. For example, in many communities, the waiting list for Section 8 Housing Choice Vouchers is so long it could take years to obtain a voucher, or, in some communities, the list is closed completely. As of February 1, 2011, there were 24,617 families on the NYC Housing Authority's waiting list for Section 8 Housing, which has been closed since May 14, 2007.²¹ Moreover, New York City lost over 32,340 units of privately owned subsidized rental housing between 1990 and 2005.²² There are currently approximately 171,500 subsidized housing units in New York City, many of which have subsidies that will expire unless action is taken to preserve them.²³

Barriers to accessible housing

People with disabilities often cannot find housing that allows them to simply get in the front door, for example, if they use a wheelchair. There are few requirements to build apartments and homes that are accessible to people with mobility and sensory disabilities and what requirements there are have been poorly enforced.

- Under Section 504 of the Rehabilitation Act of 1973, new federally financed multi-family housing projects (containing five or more dwelling units) must be designed and constructed to be readily accessible to and useable by individuals with disabilities. A minimum of 5% of the total dwelling units (with a minimum of no less than one unit) in a multi-family housing project must be made fully accessible and move-in ready for persons with physical disabilities and at least 2% of units (but not less than one unit) must be accessible for individuals with hearing or vision impairments. For years, New York State Homes and Community Renewal (HCR) interpreted this requirement to allow for the creation of *adaptable* units, instead of **move-in ready** accessible units for individuals with physical and sensory disabilities. As a result, countless units were constructed that violated accessibility requirements, further decreasing the already limited stock of housing accessible to people with mobility and sensory disabilities.
- While HCR has modified its previous interpretation of the accessibility requirements of Section 504, it is unclear what enforcement procedures HCR uses to verify a developer's compliance and to address noncompliance in new construction.

²⁰ *Affordable-Accessible Housing In a Dynamic City: Why and How to Increase Affordable Housing Development in Accessible Locations*, Victoria Transport Policy Institute. August, 2011.

²¹ *About NYCHA: Fact Sheet*, <http://www.nyc.gov/html/nycha/html/about/factsheet.shtml>, Revised on March 18, 2011.

²² *Neighborworks America Study: Long-Term Affordable Housing Strategies in Hot Housing Markets*, Jesse Mintz Roth, 2008.

²³ *The State of New York City's Subsidized Housing: 2011*, Furman Center for Real Estate and Urban Policy.

- People with disabilities often do not know that accessible units are available because developers do not always reserve the units for, and properly market them to, people with disabilities.
- Accessible units for people with mobility limitations are often not available and requests for home modifications to make units accessible are often denied.²⁴ The problem is particularly acute in New York City; the NYC Housing Authority's October 31, 2011 list of 500 available apartments only included three accessible apartments.
- Access to Home, a successful State program that provides funding for home modifications, has been severely under-funded for years. In March 2010, HCR's Notice of Funding Availability (NOFA) announced \$4 million in funding; sixty-six applications were received requesting a total of more than \$22 million in funding - over five times the available funds.
- Under the TBI and NHTD Medicaid waivers, Medicaid funds may be used to pay for modifications to a waiver participant's home to make the home accessible. As the State transitions to Managed Long Term Care, availability of these waiver services is at risk. The State should require plans to offer home modification services as part of the service package, in order to ensure that qualified plan members with disabilities are served in the most integrated setting appropriate to their needs.
- Statewide, there is a need for rehabilitation and modernization funds for aging housing stock that has been subject to significant disinvestment.²⁵ Older homes that were designed before accessibility standards existed pose structural barriers, such as narrow doorways and the absence of a first-floor bathroom, which make it difficult for older adults and those with mobility limitation to meet their daily needs.

Barriers to integrated housing

People with disabilities want to live in the community with their non-disabled peers. For many reasons, individuals with disabilities of all ages may prefer housing in scattered, integrated settings, not tied to the provision of support services. For example, an individual may prefer that her service provider is not also her landlord. Moreover, most supportive housing models, including assisted living programs, do not serve people with significant physical, sensory and cognitive disabilities. Many community-based supports for people with physical, sensory and cognitive disabilities have been provided through Medicaid waivers such as the NHTD and TBI waivers and the Long Term Home Health Care Program, which include service coordination. As the State transitions to Health Homes and Managed Long Term Care, all consumers of long term care services will have care coordination services available and housing must be a part of the care coordination services provided. Policy makers must resist viewing disability housing policy through the lens of service systems dominated by silos

²⁴ *2009 Worst Case Housing Needs of People with Disabilities: Supplemental Findings of the Worst Case Housing Needs 2009: Report to Congress*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, March 2011

²⁵ *New York State Consolidated Plan 2011-2015*, New York State Homes and Community Renewal. December 2010.

based on type of disability and age. An effective disability housing policy would ensure that fully integrated affordable, accessible housing is created, in addition to supportive models, so that supportive housing beds are available to individuals who want and need them.

Recommendations to Increase Fully Integrated Affordable, Accessible Housing

In announcing the State's recent settlement of litigation in *Joseph S. v. Hogan*, which claimed that New York was unlawfully segregating individuals with serious mental illness in nursing homes, thereby denying them their right to live independently in integrated community settings, Andrew Zambelli, counselor to the governor, stated that the settlement was indicative of "the Governor's overall agenda to protect vulnerable populations, to encourage people living in the community rather than in institutions and to dedicate resources for appropriate purposes while ensuring that the state receives value for what it spends."²⁶ NYAIL supports the Governor's vision for community integration and offers the following recommendations to increase the development of affordable, accessible, integrated housing for people with disabilities and older New Yorkers:

Increase use of cost-effective community-based services to transition individuals out of nursing facilities.

Over 22,000²⁷ New Yorkers with disabilities who are currently in a nursing facility have indicated their desire to return to the community. Community-based Medicaid programs such as the Consumer Directed Personal Assistance Program and the Nursing Home Transition and Diversion Waiver, which includes a housing subsidy, are far less costly than nursing facility services *and* they have proven their success at serving individuals with complex needs. However, despite these fiscal and qualitative benefits, these programs are vastly underutilized, perpetuating unnecessary and excessive institutional expenditures. New York State could save hundreds of millions of Medicaid dollars by transitioning a small fraction of this population out of institutions.²⁸ By reinvesting the majority of these savings into community-based services and affordable, accessible housing, the State would actually bend the cost curve of long term Medicaid growth.

Prioritize HOME Investment Partnership funding to assist New Yorkers with disabilities and seniors transitioning from institutions.

Of the \$180.6 million in HOME funds New York State received in 2011, \$34 million went to HCR, the State's Participating Jurisdiction (PJ), and the remaining was distributed to 28 local PJs based on size and population characteristics. HOME funds can be used for Tenant-Based Rental Assistance (TBRA), which works like a Housing Choice Voucher, subsidizing rents for an apartment or house, as well as for payment of security deposits. TBRA vouchers are intended to be a temporary form of assistance, as tenants are required to apply for Section 8 Housing Choice Vouchers for permanent housing assistance. PJs may elect to

²⁶ Caher, John. "State Accepts Settlement to Fund Warehousing Mental Patients." *New York Law Journal*, September 12, 2011.

²⁷ Center for Medicare and Medicaid Services' Minimum Data Set Q1A report, 3rd Quarter 2010.

²⁸ *Proposals to reduce New York State spending and promote the independence and integration of seniors and people with disabilities*. Prepared by the New York Association on Independent Living and the Center for Disability Rights, January 7, 2011.

provide TBRA to targeted populations, such as individuals transitioning from nursing facilities. HCR's projection that 125 TBRA units will be developed in the next five years is wholly inadequate to meet the actual needs of people with disabilities. Meanwhile, the state plans 750 units for low income seniors and 1,400 rental units for working families in the same period.²⁹

New York should prioritize HOME funds for TBRA to transition individuals out of nursing facilities. To do so, the State must amend the 2011-2015 Consolidated Plan, which governs the use of HUD allocations in the state, to increase the allocation of HOME funds to TBRA, and target the 22,000 New Yorkers living in nursing facilities who have indicated they wish to return to the community. In addition, New York should commit to setting aside 20% of all future HOME funds for tenant-based rental assistance.

Incentivize affordable housing projects that set aside 10% of its units for people with disabilities living on extremely low incomes.

There are various funding streams available to affordable housing developers, including the federally-funded Low Income Housing Tax Credit (LIHTC), the state-funded Low Income Housing Tax Credit (SLIHC), the Low Income Housing Trust Fund (HTF), and the HOME programs. Funding from these programs is awarded through highly competitive processes. The State should offer additional scoring points for projects that create a 10% set aside of affordable units to individuals who receive Supplemental Security Income (SSI), which is far below 30% Area Median Income (AMI).

The State should collaborate with Public Housing Authorities (PHAs) to address the lack of affordable, accessible, integrated housing options for people with disabilities.

PHAs are responsible for the management and operation of local public housing programs, including administration of federal HUD funds. The Secretary of HUD has called on PHAs to work in collaboration with state housing finance agencies and local disability organizations to promote the transition of people with disabilities and seniors out of institutional settings and to provide integrated, affordable and accessible community housing options.³⁰ The administration of housing programs and funding varies per PHA based on their annual Administrative Plans; however, they all have an obligation to assess the housing needs of persons with disabilities in their local service area, which includes persons transitioning from institutional to community-based settings.³¹ Because PHAs report directly to HUD, there has been historically little collaboration between the State and PHAs. By working together, HCR and the local PHAs could leverage the use of their federal funds to increase access to affordable, accessible housing integrated in the community. For example, PHAs could designate a percentage of their total allocation for the Housing Choice Voucher Program to be used for project-based assistance to assist developers in creating more housing affordable to people with disabilities living at 30% AMI and below. PHAs could also set aside a percentage of their Housing Choice Vouchers for people who are seeking to transition from

²⁹ *New York State Consolidated Plan 2011-2015*, New York State Homes and Community Renewal. December 2010.

³⁰ *Funding Sources Successfully Used by States to Support Development of Integrated, Affordable, and Accessible Community Housing*, Independent Living Research Utilization.

³¹ *HUD Points Out Olmstead Enforcement Options*, Steve Gold. Information Bulletin # 340. September 2011.

institutional settings to integrated community settings, as was done in the City of Yonkers Municipal Housing Authority.

Increase the percentage of accessible units developed in all housing projects that receive state or federal funds.

HCR has made efforts to increase the availability of accessible housing for people with disabilities, including extending the accessible set-aside requirements of Section 504 of the Rehabilitation Act of 1973 to the state-financed low income housing tax credit (SLIHTC) housing projects. In addition, HCR has implemented enhanced scoring incentives for applicants who increase the set aside requirement from the mandated five percent of accessible units for people with mobility impairments and two percent for people with sensory impairments to 10% and 4%, respectively. These incentives work. According to the 2011-2015 New York State Consolidated Plan, “Of the total awards announced in July 2009, approximately 70% met or exceeded the 5% and 2% criteria and more than 50% met or exceeded the 10% and 4% criteria. The 2009 awards are creating more than 400 fully accessible units for persons with mobility, hearing or vision impairments.”

New York could make a strong commitment to the development of accessible housing by increasing the accessibility mandate to 10% and 4% set asides for *all* federal and state funded construction projects. In addition, HCR should provide enhanced scoring incentives for applicants who go above the 10% and 4%.

Develop specific protocols for verifying developers’ compliance with Section 504 set aside requirements in new construction and for rectifying noncompliance.

Municipal, state and local housing agencies do not enforce the HUD required set aside of accessible and sensory-adapted units in their housing funded with Federal funds. There is currently no information on how many public housing units are accessible in the State. Section 504 requires PHAs to do a self evaluation of all their programs, housing and facilities to determine if they are in compliance and to develop transition plans to deal with conditions that are not in compliance.³² These documents are considered public and should be available upon request from a PHA. Disability rights advocates are aware of no such information available through HCR and HCR’s procedures for verifying and rectifying noncompliance of Section 504 requirements are unknown. HCR must develop and publish explicit enforcement mechanisms for the requirement for minimal accessible units in all new and substantially rehabilitated construction. One way to do so would be to hold back a certain percentage of funding from developers until the minimal % of accessible units has been verified by an independent source. Independent Living Centers have the expertise to help ensure developers meet accessibility standards.

Require developers to properly market and reserve accessible units for people with disabilities.

In addition to enforcing the development of accessible set-aside units, the State must ensure these units are reserved for and occupied by those who need the accessibility features. The State does require developers to document how they will reserve and market accessible

³² *The State of Housing in America in the 21st Century: A Disability Perspective*, National Council on Disability. January 19, 2010.

units, but we are unaware of how the State is verifying and enforcing these requirements. The State should start by conducting an assessment of all 504 accessible set-aside units to determine how many are currently occupied by individuals in need of the accessibility requirements. HCR and local PHAs must maintain a "waiting list" that has information regarding which individuals require accessible vacant units³³ and should work with Independent Living Centers and other community based organizations to market units to people with disabilities.

New York should require basic accessibility features be incorporated in all publicly funded housing construction.

Most existing housing stock was not built to meet the needs of people with disabilities, including age-related disabilities. Including accessibility features at the time of construction is cheaper than renovating new homes, meets the needs of all people throughout their lifespan, and allows homes to be visitable to friends and family members with disabilities. New York should pass the Inclusive Home Design bill (to be introduced in the 2012 session), drafted by AARP and NYAIL, which would require basic accessibility features be incorporated in all new construction and substantial rehabilitation of residential housing that receives financial assistance for construction from federal, state, county or local governments. This would include a detached or semi-detached single family home, town house or any individual unit in a duplex or triplex.

State funding for the *Access to Home* home modification program should be increased.

There is a growing need for accessible housing to meet the needs of an aging population and people with disabilities, but home modifications can be very costly. The *Access to Home* program is critical to people with disabilities, but it is drastically under-funded. New York should increase funding levels in HCR's proposed program budget in the 2012-13 Executive Budget to address the significant unmet need for home modification funding, as evidenced in the 2010 funding cycle.

Medicaid waiver housing subsidy programs and home modification services should be expanded.

As the State transitions to a Managed Long Term Care System, housing subsidies must be maintained and expanded to ensure people who need long term services and supports will not end up in nursing facilities because of the lack of affordable housing. In addition, the State should require MLTC plans to offer home modification services as part of their service package, in order to ensure that qualified plan members with disabilities are served in the most integrated setting appropriate to their needs.

New York should make discrimination by landlords based on a tenant's source of income illegal under State Human Rights Law.

Many people with disabilities rely on rental subsidies and other assistance programs to live independently in the community, yet too often, landlords reject them as tenants based on their source of income. Discrimination based on source of income is illegal in New York City. The State should extend this same protection to people with disabilities throughout New York

³³ HUD Points Out Olmstead Enforcement Options, Steve Gold. Information Bulletin # 340. September 2011.

by passing A.1121/S.83, legislation sponsored by Assemblymember Bing and Senator Squadron, which would make source of income discrimination illegal throughout New York.

The federal definition of “homelessness” should be expanded to include people in institutions and at risk of institutionalization.

The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act) modified the definition of homelessness to expand the scope of those eligible to new populations, such as people who are temporarily “doubled up” with friends and family. In April 2010, HUD issued proposed rules implementing HEARTH that would impact eligibility for housing assistance due to homelessness. We believe the proposed definition of homelessness does not go far enough. While a nursing facility provides residents with housing, we question whether residents ever consider such a facility the equivalent of a community-based “home.” People in nursing facilities who wish to transition out should also be considered “homeless” for purposes of eligibility for federal housing assistance. HUD has not yet adopted the final rules implementing the HEARTH Act; we therefore urge the administration to advocate with HUD to ensure individuals in nursing facilities are considered “homeless” under an expanded federal definition implementing the HEARTH Act.

People with disabilities are more often being allowed a seat at the table where momentous systemic changes are being considered. NYAIL is grateful for being included in this and other MRT Work Groups, but more people with disabilities, including older New Yorkers with disabilities, should be part of the planning discussion too. State policy must primarily reflect the needs of those who receive services and supports, rather than those that provide services. We encourage the creation of additional opportunities for this Workgroup to hear directly from people with disabilities, through public hearings, membership on subcommittees, or other methods, in order to ensure many voices of people with disabilities are part of this critical conversation.

For more information, contact: Lindsay Miller, Advocacy Coordinator, lmiller@ilny.org, ph. 518-465-4650.

The New York Association on Independent Living (NYAIL) is a membership organization representing people with disabilities and Independent Living Centers (ILCs). ILCs are consumer-controlled, cross-disability, community-based not-for-profit providers of advocacy, services and supports for New Yorkers with disabilities of all ages. NYAIL advocates to improve the quality of life and safeguard the civil rights of people with disabilities.