



National Disability Policy: A Progress Report, 2024

National Council on Disability

October 31, 2024

National Council on Disability (NCD)
1331 F Street NW, Suite 850
Washington, DC 20004

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National Council on Disability, October 31, 2024
Celebrating 40 years as an independent federal agency.

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National Council on Disability

An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

Letter of Transmittal

October 31, 2024

President Joseph R. Biden Jr.
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

The National Council on Disability (NCD) is pleased to submit the enclosed 2024 Progress Report, which provides a statutorily required status update on the nation's advancements and successes in disability policies as well as recommendations concerning the challenges that remain and require attention. NCD is required to provide this annual report to assess the status of progress in achieving disability policies, identify any new and emerging issues, and provide recommendations. In this report, NCD outlines points of progress in several policy areas, while also making recommendations pertaining to the still outstanding challenges that remain.

As explained in this report, several significant policy developments occurred since our last progress report, with focused attention now shifting to their successful implementation to make the policies meaningful and impactful to the daily lives of people with disabilities.

This report highlights, in particular, issues pertaining to the health of people with disabilities as well as issues related to employment, travel, accessible technology, housing, and the US census. The report also discusses the needs of people with disabilities within tribal lands. NCD has identified these areas of focus as being particularly useful barometers this year of both the advancements and still outstanding needs of people with disabilities from a policy perspective.

NCD looks forward to assisting this Administration and Congress in their efforts on behalf of people with disabilities to advance policy that promotes the goals of the Americans with Disabilities Act—equality of opportunity, economic self-sufficiency, independent living, and full participation of people with disabilities in all aspects of society—regardless of type or severity of disability.

Respectfully,

Claudia Gordon

Claudia L. Gordon
Chair

(The same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate and the Speaker of the U.S. House of Representatives.)

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National Council on Disability’s Mission and History

Mission

The National Council on Disability’s (NCD) mission is to be a trusted advisor in collaboration with people with disabilities to

- the President;
- Congress;
- federal entities;
- state governments, tribal communities, and local governments; and
- other entities and organizations.

NCD fulfills its advisory roles regarding disability policies, programs, procedures, and practices that enhance equal opportunity by

- convening stakeholders to acquire timely and relevant input for recommendations and action steps;
- gathering and analyzing data and other information;
- engaging and influencing current debates and agendas with current research;
- identifying and formulating solutions to emerging and long-standing challenges; and
- providing tools to facilitate effective implementation of policies.

History

NCD has a proud history. It was first established as the National Council on the Handicapped, a small advisory council under the Department of Health, Education, and Welfare, by the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978. NCD became an independent agency in 1984 by Public Law 98-221, the Rehabilitation Amendments of 1984, and finally had its name changed by Public Law 100-630, the Handicapped Programs Technical Amendments Act of 1988, on November 7, 1988. At that time, NCD was charged with reviewing federal disability programs and policies. In 1986, NCD recommended enactment of an Americans with Disabilities Act and then drafted the first version of the bill that was introduced in Congress in 1988.

NCD is an independent federal agency and is composed of nine members: four appointed by the majority and minority leadership in Congress and five appointed by the President. NCD provides advice to the President, Congress, and executive branch agencies to advance policy that promotes the goals of the Americans with Disabilities Act—equality of opportunity, economic self-sufficiency, independent living, and full participation in all aspects of society—regardless of type or severity of disability.

A more comprehensive history of the agency is detailed in NCD’s 1997 publication titled *Equality of Opportunity: The Making of the Americans with Disabilities Act*.

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Executive Summary

Per its authorizing statute, the National Council on Disability (NCD) is mandated to issue an annual report concerning disability policy. The report is meant to present, as appropriate, available information on progress made in areas of health, transportation, employment, housing, technology, and other vital topic areas. The report also includes recommendations for policy changes that remain necessary. The following serves as key highlights of what has been an eventful year in disability policy development.

There have been notable developments in the field of healthcare for people with disabilities this past year. It is an aspect of disability policy that has long been in need of significant advancements. While there is still much work to be done, NCD applauds the designation of people with disabilities as a “Health Disparities Population” by the National Institute on Minority Health and Health Disparities. This vital step significantly opens up opportunities for research related to disability. Likewise, NCD commends the final Section 504 (of the Rehabilitation Act) rule by the Office for Civil Rights of the US Department of Health and Human Services for its inclusion of significant requirements ensuring the use of accessible medical and diagnostic equipment.

There have been substantial advancements in travel policy and law. The signing into law

of the 2024 Federal Aviation Administration Reauthorization Act marked significant progress for people with disabilities. The Act enhances access for passengers with disabilities by, among other things, requiring airlines to accommodate seating requests for disability-related needs, setting new training standards for airline personnel who handle and store wheelchairs to prevent damage, and providing grants to fund airport accessibility upgrades. The Act mandates that all medium and large airports install or maintain at least one universal changing station in each terminal and requires clearly visible signage near the entrance to inform travelers of their locations. With respect to the regulatory process, the US Department of Transportation proposed a regulation that would ensure airline passengers who use wheelchairs can travel safely and with dignity. The proposed rule would set new standards for prompt, safe, and dignified assistance and mandate enhanced training for airline employees and contractors who physically assist passengers with disabilities and handle passengers’ wheelchairs. The rule would further specify actions that airlines must take to protect passengers when a wheelchair is damaged during transport.

In the realm of technology, the US Department of Justice issued its final rule

revising the regulation implementing Title II of the Americans with Disabilities Act. The rule establishes specific requirements, including the adoption of technical standards to ensure that the services, programs, and activities offered by state and local government entities through web and mobile applications are accessible to the public.

While these advancements are commendable, there is undoubtedly still much to do in the coming year across various areas of disability policy. This report outlines the corresponding recommendations NCD proposes to address these challenges.

Acronym Glossary

ACAA	Air Carrier Access Act
ACL	Administration for Community Living
ACS	American Community Survey
ADASP	Americans with Disabilities Act Stations Program
AMDE	Accessible Medical and Diagnostic Equipment
CANAR	Consortia of Administrators for Native American Rehabilitation
CSAVR	Council of State Administrators of Vocational Rehabilitation
CT	Clinical Trial
DOJ	US Department of Justice
DOL	US Department of Labor
DOT	US Department of Transportation
FAA	Federal Aviation Administration
FDA	US Food and Drug Administration
FDORA	Food and Drug Omnibus Reform Act
FEMA	Federal Emergency Management Agency
HEADs UP Act	Healthcare Extension and Accessibility for Developmentally Disabled and Underserved Population Act
HHS	US Department of Health and Human Services
ICDR	Interagency Committee on Disability Research
I/DD	Intellectual and Developmental Disabilities
IFR	Interim Final Rule
NCD	National Council on Disability
NIDILRR	National Institute on Disability, Independent Living, and Rehabilitation Research
NIH	National Institutes of Health
NIMHD	National Institute on Minority Health and Health Disparities
SMUP	Special Medically Underserved Population
VR	Vocational Rehabilitation

Section 1: Health Status and Healthcare

Health Disparities of People with Disabilities

For years, the National Council on Disability (NCD) has espoused that the predicate to a person's ability to live, learn, and earn is to attain and maintain access to appropriate healthcare—mental, physical, and overall well-being. For people across all categories of disabilities, attaining and maintaining good health has been elusive due in part to extensive barriers and bias within the US healthcare system. The US healthcare system has, for generations, failed to appropriately consider and treat 26 percent of the US population, so much so, in fact, that many people with disabilities utilize the healthcare system only for acute episodes or basic disease management instead of disease prevention or general wellness and may even view the healthcare system as a source of potential harm. Much of the well-documented barriers and bias that exist within the current US healthcare system are due to an absence of even minimal disability cultural competency curricula in medical, nursing, and other health professional schools. The ultimate product of these barriers and bias is decades-long significant health disparities between people with disabilities and their nondisabled counterparts, which are particularly acute in certain disability subpopulations. Today, in the United States, if

you are a person with a physical, intellectual, or developmental disability, your life expectancy is less than that of someone without disabilities.¹ You are more than three times as likely to have arthritis, diabetes, and a heart attack.² You are significantly more likely to have unmet medical, dental, and prescription needs.³

Following consultation with people with disabilities as well as a multidisciplinary team of disability and health policy experts, and after years of NCD's own health disparities research, NCD released and continues to regularly update its Framework to End Health Disparities for People with Disabilities (Framework). The Framework noted five core recommendations that, if achieved, will be significant steps forward in the journey to end health disparities for people with disabilities.

Recommendations Made by NCD Concerning Health Disparities of People with Disabilities

1. The US Department of Health and Human Services (HHS) should designate people with disabilities as a Health Disparities Population. *Health Disparities Population Designation of People with Disabilities Developments:*

In September 2023, the Director of the National Institute on Minority Health and Health Disparities (NIMHD) designated people with disabilities as

a Health Disparities Population.⁴ This designation will encourage, through funding, significant research into the healthcare concerns of people with disabilities by the National Institutes of Health (NIH). Prior to the announcement, NCD had extensively advised NIMHD of the justification in support of this

recommendation and was pleased to see this vital and momentous designation be made.

With this decision, HHS agreed that research is needed to understand the barriers and unmet

healthcare needs faced by people with disabilities and to develop effective interventions to address them, and this research would be facilitated through this designation. NCD commends NIH for taking this significant step of formally recognizing the health disparities faced by people with disabilities. This acknowledgment will undoubtedly lead to increased

investment in research aimed at addressing and eliminating these disparities.

2. Congress should designate people with disabilities as a Special Medically Underserved Population under the Public Health Service Act.

Special Medically Underserved Population Designation of People with Disabilities Developments:

NCD continues to work closely with Members of Congress regarding the Healthcare Extension

and Accessibility for Developmentally Disabled and Underserved Population Act (HEADs UP Act), which NCD helped draft. This bill seeks to designate all people in the United States with intellectual and developmental disabilities (I/DD) as a “Special Medically Underserved

Population” (SMUP), thereby providing significant government programs aimed at increasing access of people with I/DD to essential healthcare services (including federal funding for health

centers and public health infrastructure such as federally qualified health centers; eligibility to apply for federal funding to develop and operate community health centers; access to loan repayment and training programs in workforce development and training programs for providers who treat the underserved population,

including the National Health Service Corps scholarships, among others). NCD’s position is that all people with disabilities warrant such a designation based on the body of health disparities research; therefore, NCD recommends passage of the HEADs Up Act,

which would mark progress toward that end by designating an important subpopulation with specific health disparities.

Additionally, in the US Senate, Sens. Robert P. Casey Jr., Tim Kaine, Tammy Duckworth, and Jeff Merkley introduced the Health Equity

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for People with Disabilities Act, which seeks to modify certain grants available to health centers that offer primary health services to medically underserved populations to ensure that members of such populations with disabilities receive accessible health services. While not seeking a SMUP designation, the bill would amend the Public Health Services Act to clarify that among the groups already classified as medically underserved populations, the needs of people with disabilities will be a priority to reduce health disparities. Under this disability priority, health centers across the United States would also be able to use quality improvement grants to focus on improving accessibility accommodations and reducing barriers to care within their clinics, which may improve healthcare services to millions of Americans with disabilities. NCD supports this effort as consistent with the principles of NCD's advisement in its Framework.

3. Standardized disability clinical care curricula should be required of all US medical, nursing, and other healthcare professional schools and disability competency education and training of all medical, nursing, and other healthcare professionals.

Standardized Disability Clinical Care and Competency Education Developments:

NCD has collaborated with relevant nongovernment organizations to raise awareness of the need to include disability clinical care and competency training in medical and nursing education programs. These organizations include the Association of American Medical Colleges, the Accreditation Council for Graduate Medical Education, and The Joint Commission (on hospital accreditation), among others. A major national conference

serving heads of medical education programs is being organized by the Accreditation Council for Graduate Medical Education and the Association of American Medical Colleges around this important issue for March 2025. This policy step would no doubt serve as a crucial component toward ending the health disparities of people with disabilities and must continue to be pursued as a matter of policy.

4. Improved health data collection for people with disabilities should be required across US government programs.

Improved Health Data Collection for People with Disabilities Developments:

The National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) and the Interagency Committee on Disability Research (ICDR) had relaunched and reimagined the Disability Data and Statistics Working Group. This working group focuses on establishing greater coordination and collaboration related to disability statistics, terminology, and data collection. The ICDR released a toolkit, *Surveying the Landscape of Disability Data and Statistics*, that catalogs federal research and resources and outlines the current federal landscape of disability data and statistics, with the intention of promoting interagency collaboration at the federal level.⁵

Further, the Administration for Community Living leads a cross-agency initiative called I/DD Counts—an initiative established to maintain accurate data on the prevalence of I/DD in the United States and its territories and to improve the collection, analysis, and interpretation of the health-related data of people with I/DD. Its vital focus continues.

5. Accessible medical and diagnostic equipment should be required.

Accessible Medical and Diagnostic Equipment Developments:

The final revised Section 504 (of the Rehabilitation Act) rule by the Office for Civil Rights of the HHS included significant requirements mandating the use of accessible medical and diagnostic equipment (AMDE). The final rule adopts the Architectural and Transportation Barriers Compliance Board's (US Access Board) standards for AMDE, which were voluntary, and makes them required and enforceable. The final rule also requires that within two years of the effective date, recipients using examination tables and/or weight scales have at least one accessible version of the equipment. This historic rulemaking cited to and incorporated many of NCD's research-based recommendations, including its repeated advisement to require AMDE.⁶

Additionally, NIH is working on developing accessible home medical tests for people with disabilities. NIH seeks to make improvements in the design of home medical tests in three focus areas: individuals who have low or no vision, individuals with fine motor skill difficulties, and older adults. Issues to be addressed include (1) the need for more intuitive test packaging, (2) the need for clearer instruction, (3) the need for easier maneuver test components (small test components, difficult to manipulate, frequent accidental test damage or contamination), and (4) the need for more descriptive results (currently, they often lack a clear readout and lack a nonvisual means of result interpretation). The goal is to ensure that tests

that consumers use in their homes are accessible for people with vision disabilities and disabilities that impact dexterity.

On the enforcement front, HHS, Office for Civil Rights, entered into a settlement with the New Jersey Imaging Network to resolve a civil rights complaint from an individual who uses a wheelchair and was denied mammography because of her disability, based on Section 504 of the Rehabilitation Act and Section 1557 of the Affordable Care Act, which prohibit discrimination on the basis of disability. Together, these laws protect people with disabilities from discrimination in any program or activity receiving funding from HHS.

The final revised Section 504 (of the Rehabilitation Act) rule by the Office for Civil Rights of the HHS included significant requirements mandating the use of accessible medical and diagnostic equipment (AMDE).

The settlement ensures that New Jersey Imaging Network will comply with the law, including newly issued rules, by having processes and procedures in place to provide people with

disabilities the same access to care as those without disabilities by providing the same appointments and ensuring access to appropriate equipment.

Under the terms of the settlement, New Jersey Imaging Network will address the following:

- Revise its existing policies and practices to make appointments available during normal business hours to all patients, document requests for mobility assistance or other reasonable accommodations, provide patients with a description of available accommodations, and notify patients of their rights under the law.

- Develop a process for individualized assessment of patients who may require reasonable accommodations.
- Train its staff on the new policies to ensure employees understand practices and procedures for interacting with and accommodating individuals with disabilities, techniques for safely assisting individuals with limited mobility to ensure their safe access to and use of medical equipment and examination tables, and New Jersey Imaging Network’s various nondiscrimination and nonretaliation obligations.
- Notify patients, staff, and the public of rights and protections afforded them by federal law and how to file a discrimination disability-based complaint with HHS.

Healthcare Disability Nondiscrimination

Pervasive discrimination on the basis of disability in accessing medical care leads to significant health disparities and poorer health outcomes for individuals with disabilities. This pattern of discrimination appears in a variety of contexts including organ transplantation, life-sustaining treatment, participation in clinical research, and crisis standards of care that may go into effect when healthcare resources are limited.

Recommendation Made by NCD Concerning Healthcare Disability Nondiscrimination

6. HHS should issue regulations clarifying the obligations of covered entities under Section 504 of the Rehabilitation Act with

respect to the withholding of life-sustaining care, medical futility determinations and organ transplant discrimination, organ donation, and other areas relevant to healthcare or disability discrimination by HHS entities. The regulations should ensure neither long-term survivability nor quality of life is taken into account in making healthcare determinations.

Healthcare Disability Nondiscrimination Developments:

As previously mentioned, in May 2024, HHS issued a final rule to advance equity and bolster protections for people with disabilities.⁷ As was recommended by NCD, the rule ensures that medical treatment decisions by those who receive federal financial assistance from HHS are not based on biases or stereotypes about individuals with disabilities, judgments that an individual with a disability will be a burden on others, or beliefs that the life of an individual with a disability has less value than the life of a person without a disability.

The final rule adds new provisions that clarify existing requirements under Section 504 prohibiting recipients of financial assistance from HHS from discriminating on the basis of disability in their programs and activities, including in healthcare, child welfare, and other human services. The final rule includes new requirements prohibiting discrimination in the areas of medical treatment; the use of value assessments; web, mobile, and kiosk accessibility; and requirements for accessible medical equipment, so that persons with disabilities have an opportunity to participate in or benefit from healthcare programs and activities that is equal to the opportunity afforded others. It also adds a section on child

welfare to expand on and clarify the obligation to provide nondiscriminatory child welfare services.

The final rule also updates the definition of disability and other provisions to ensure consistency with statutory amendments to the Rehabilitation Act, enactment of the Americans with Disabilities Act (ADA) and the Americans with Disabilities Act Amendments Act of 2008, the Affordable Care Act, as well as Supreme Court and other significant court cases. It also further clarifies the obligation to provide services in the most integrated setting.

Finally, the final rule makes other clarifying edits, including updating outdated terminology and references.

NCD's research played a pivotal role in assisting HHS in developing this rule. NCD is confident that its implementation and enforcement will mark significant headway in achieving the promise of health equity for people with disabilities in the United States.

State Expansion of Oral Healthcare

In 2023, NCD released its report titled *Medicaid Oral Health Coverage for Adults with Intellectual & Developmental Disabilities—A Fiscal Analysis*.⁸ In it, NCD explored whether increasing Medicaid coverage for people with I/DD would provide a return on investment vis-à-vis the money ultimately spent on preventable illness and in emergency rooms due to untreated dental problems. NCD's findings show that adding Medicaid preventive care benefits for people with I/DD in 11 of 12 states that

provide no such benefits or emergency benefits alone would indeed provide a monetary return on investment.

Recommendation Made by NCD Concerning State Expansion of Oral Healthcare

7. States that do not provide preventive Medicaid benefits for people with I/DD or provide emergency benefits alone should make said benefits available.

State Expansion of Oral Healthcare

Development:

The state of Nevada is implementing a new Medicaid program whereby the state's population of people with I/DD will gain access to oral healthcare through state Medicaid initiatives. NCD is hopeful that more states will follow suit and implement similar programs.

Including People with Disabilities in Clinical Trials

In August 2024, NCD released a report on the exclusion of people with disabilities in clinical trials (CTs). Despite the size of the disability community, people with disabilities are often excluded in diversity and inclusion initiatives. Multiple efforts in recent years have been made to enhance the diversity in CTs. However, disability is not included as a dimension of diversity in such efforts. Explicit exclusion of people with disabilities in CTs occurs primarily due to exclusions embedded in the study protocol. In the absence of overt statements that allow accommodations for people with disabilities to complete trial activities, availability

NCD's research played a pivotal role in assisting HHS in developing [the Section 504] rule.

of accommodations is left to the interpretation of study teams. This often results in the exclusion of people who may need such support to adhere to the protocol.

In recent years, federal agencies have made efforts to address the exclusionary practices of CTs pertaining to people with disabilities. For instance, HHS's updated Section 504 regulations explicitly spell out required inclusionary practices for any CTs receiving federal funds. In 2022, Congress passed the Food and Drug Omnibus Reform Act (FDORA) and one of the provisions is for HHS to convene public workshops together and consider input from stakeholders on promising practices to increase enrollment of historically underrepresented populations in clinical studies. The US Food and Drug Administration (FDA) facilitated the workshops that discussed inclusion of individuals with disabilities including intellectual or developmental and mental illness in CTs.

Recent progress to address clinical trial exclusion

- 2022 Food and Drug Omnibus Reform Act (FDORA)
- FDA facilitated workshops discussing inclusion of people with disabilities in clinical trials
- HHS Section 504 regulation spells out required inclusionary practices for any clinical trial receiving federal funds

The explicit requirements of CT inclusion in the amended Section 504 regulations as well as FDA's workshops are positive steps. However, inclusion of people with disabilities in CTs will require consistent Section 504 enforcement by HHS and the US Department of Justice (DOJ) to ensure compliance.

Recommendations Made by NCD Concerning Including People with Disabilities in CTs

8. CT study teams should incorporate overt explanations and justifications of the availability of reasonable accommodations in informed consent documents. These would include but not be limited to additional time, caregiver support, and auditory presentation for participants with impaired consent capacity.

9. FDA and NIH should develop guidance on eligibility parameters for investigators, similar to FDA's *Guidance for Investigators on Informed Consent*. The guidance should do the following:

- Aim to reduce subjectivity in eligibility criteria to eliminate principal investigator bias and participant selection.
- Provide robust eligibility criteria for protocol teams to access when making decision-making capacity decisions.
- Broaden inclusion criteria to avoid unnecessary exclusion.
- Recommend acceptable accommodations be incorporated into inclusion criteria to reduce subjective assessment of a permissible accommodation.
- Recommend all exclusion criteria be scientifically justified.

- Recommend inclusion of people with disabilities in patient advisory boards.

10. HHS and DOJ should increase oversight and enforcement of Section 504 at healthcare facilities to ensure that programs and services are accessible to people with disabilities.

Including People with Disabilities in CT Development:

NCD will continue to monitor this issue and call for the implementation of these recently provided recommendations.

Section 2: Transportation

NCD wholeheartedly supports the passing of the 2024 Federal Aviation Administration (FAA) Reauthorization Act that includes essential accessibility requirements for people. These requirements encompass accommodating seating requests based on disability-related needs, establishing new training standards for airline personnel who handle and store wheelchairs to prevent damage, and ensuring the availability of universal changing stations in airports. NCD fully supports as well other developments including the regulatory actions taken by the US Department of Transportation (DOT), guidelines provided by the US Access Board, and ongoing accessibility improvements made by Amtrak.

Recommendation by NCD Concerning Transportation

11. Expanded accessibility across all travel venues must be implemented.

Air Travel Developments:

The signing into law of the 2024 FAA Reauthorization Act marked essential accessibility requirements for people. These mandates include accommodating seating requests based on disability-related needs, establishing new training standards for airline personnel who handle and store wheelchairs to prevent damage, and awarding grants for airport accessibility upgrades. The Act further mandates that all medium and large

airports install or maintain at least one universal changing station in each terminal and requires clearly visible signage near the entrance to inform travelers of their locations. This allows people who need this accommodation to travel with dignity, by providing them with a safe, sanitary, and private place to take care of their personal needs.

The FAA awarded \$103.2 million in federal funding through the Airport Terminals Program to improve ADA accessibility in multiple airports, funded under the Infrastructure Law.⁹ It further expanded compliance and enforcement of the Air Carrier Access Act and is implementing regulations by hiring more attorneys and analysts to investigate and process a backlog of complaints filed by people with disabilities.¹⁰ In addition, it released travel tips for wheelchair users on its website in order to further educate passengers with disabilities about sharing information about their wheelchairs and scooters in advance of travel with airlines.¹¹

DOT reached an agreement with United Airlines resulting from its investigation into the death of a passenger with a disability. The agreement requires the airline to take several actions to ensure that wheelchair users travel with safety and dignity, including posting the width of plane cargo doors online so that customers can determine whether their wheelchair will fit in a particular plane.¹²

Further, DOT issued a final rule to amend the DOT's Air Carrier Access Act regulation to improve the accessibility of lavatories on single-aisle aircraft. This final rule is intended to ensure that the US air transportation system is safe and accessible to individuals with disabilities.¹³ Additionally, DOT proposed a rule to strengthen its regulations implementing the Air Carrier Access Act to address problems that individuals with disabilities using wheelchairs and scooters confront when traveling by air that impact their dignity and safety, including mishandled wheelchairs and scooters and improper transfers to and from aircraft seats, aisle chairs, and personal wheelchairs.¹⁴

Ground Travel Developments:

Amtrak has continued to improve on its accessibility to people with disabilities through ongoing training of employees and increased physically accessible stations and cars. Amtrak's Americans with Disabilities Act Stations Program (ADASP) is a multiyear program developed to bring stations, or the components of stations that Amtrak has ADA responsibility for, into compliance with ADA requirements. The ADASP is funded by the Infrastructure Investment and Jobs Act. As reported by Amtrak under its US DOJ Settlement Agreement (for the reporting period of

November 1, 2023, through April 30, 2024), as of close of April 2024, there are 385 stations where Amtrak has some type of ADA responsibility (e.g., station building, passenger platform, and/or parking). Amtrak reports that its ADA responsibility has been addressed at 190 stations (123 stations where Amtrak has met its ADA responsibility for

some or all components and 67 stations where Amtrak has met its ADA responsibility with exception of the passenger platforms, which will require additional work).¹⁵

The Federal Highway Administration launched a new ADA transition plan webpage to inform the public on the strides states have made in addressing the pre-ADA legacy of inaccessible pedestrian facilities.¹⁶

US Access Board Developments:

The US Access Board issued a final rule, "Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way," providing minimum guidelines for all newly constructed pedestrian facilities and altered portions of existing pedestrian facilities for pedestrian circulation and use in the public right-of-way. These guidelines, once adopted, will serve as the technical basis of enforceable standards issued by the US General Services Administration under the Architectural Barriers Act of 1968, as amended, and would ensure that facilities used by pedestrians

This [Air Carrier Access Act] final rule is intended to ensure that the US air transportation system is safe and accessible to individuals with disabilities.

Amtrak's Americans with Disabilities Act Stations Program (ADASP) is a multiyear program developed to bring stations, or the components of stations that Amtrak has ADA responsibility for, into compliance with ADA requirements.



that are subject to the Act, such as sidewalks and crosswalks constructed or altered in the public right-of-way by Federal, state, and local governments using federal funds, are readily accessible to and usable by pedestrians with disabilities.¹⁷

The US General Services Administration issued a final rule amending the Federal Management Regulation regarding real property design and construction to adopt the new accessibility guidelines issued by the US Access Board.¹⁸

Section 3: Employment

Fair and reasonable employment policies are of course essential to achieving economic self-sufficiency for people with disabilities. This year NCD has primarily focused its consideration of disability policy within the scope of employment on two essential areas that no doubt deserve attention: the AbilityOne program and Tribal Lands Vocational Rehabilitation.

Recommendation by NCD Concerning the AbilityOne Program

12. There should be a phaseout of the AbilityOne program, to be replaced by amending Section 503 of the Rehabilitation Act that would require federal contractors employ a percentage of people with significant disabilities and who are blind.

AbilityOne Developments:

The AbilityOne Commission published its FY 2022–2026 strategic plan in June 2022. The strategic plan laid out four strategic objectives. The objectives include focusing on transforming the program to increase competitive, integrated employment; identifying, publicizing, and increasing good jobs and optimal jobs within the program; ensuring effective governance and results across the program; and engaging in partnerships to increase employment for AbilityOne employees within and above the program.

Since the publication of the strategic plan, the AbilityOne program issued a final rule on July 21, 2022, which prohibits payments of subminimum wage on AbilityOne contracts. The AbilityOne Commission also has issued two policy documents that focus on compliance. The first, published January 1, 2024, is 51.400, “AbilityOne Commission Compliance Program” that sets forth the compliance approach of the Commission for AbilityOne nonprofit agencies. The policy document articulates the oversight obligations of the central nonprofit agencies toward the nonprofit agencies and strengthens the oversight of the AbilityOne Commission over the central nonprofit agencies’ compliance activities. The second policy document, 51.403, published January 1, 2024, “Determining Eligibility of Participating Employees,” sets forth the requirements that a nonprofit agency must meet to count AbilityOne employees toward the direct labor ratio hour required in the Javits-Wagner-O’Day Act and the documentation requirements and recordkeeping responsibilities of a nonprofit agency. Both 51.400 and 51.403 are in line with NCD’s interim recommendation from the 2020 publication, “Policies from the Past in a Modern Era: The Unintended Consequences of the AbilityOne Program and Section 14(c).”¹⁹

Additionally, on March 21, 2023, the AbilityOne Commission promulgated a final

rule, “Supporting Competition in the AbilityOne Program,” which introduces limited competition into the AbilityOne Commission. This final rule considers price and nonprice factors in high dollar value service contracts. The introduction of competition into the AbilityOne program was a recommendation from the Section 898 “Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity” created by the 2017 NDAA.²⁰

The promulgation of these AbilityOne policy documents aligns with some of NCD’s interim recommendations from our 2020 report, “Policies from the Past in a Modern Era: The Unintended Consequences of the AbilityOne Program and Section 14(c).” However, NCD made clear in the report that the interim recommendations were only contextually appropriate during the phaseout of the AbilityOne program, and implementation of any NCD interim recommendations does not negate our recommendation to phase out the AbilityOne program. Recent updates to the AbilityOne program do not address the underlying structural problems and incompatibility of the AbilityOne program with modern disability policy. Therefore, NCD continues to recommend a phaseout of the AbilityOne program to be replaced by amending Section 503 of the Rehabilitation Act that would require federal contractors employ a percentage of people with significant disabilities and who are blind.

Recommendation by NCD Concerning the US Department of Labor and Section 14(c) Certificates

13. The US Department of Labor (DOL) should restrict the issuance of Fair Labor Standards Act Section 14(c) certificates (which allows businesses to pay people with disabilities less

than the federal minimum wage) to nonprofit agencies that work on AbilityOne contracts. Issuance of Section 14(c) certificates should be phased out over time.

DOL Development:

As reported by DOL to congressional authorizing and appropriations committees, as of October 2023, 781 employers held issued 14(c) certificates, who reported paying 42,134 workers at subminimum wages in their previously completed fiscal quarter; and there were 65 employers with a pending certificate application.²¹ This number is significantly down from the 420,000 people earning subminimum wages under the 14(c) program in 2012 as indicated at that time by NCD in a report that recommended a phaseout of the 14(c) program.²² This downward trend is concurrent with a greater emphasis on competitive, integrated employment since the passage of the 2014 Workforce Innovation and Opportunity Act.

In the Spring 2024 Unified Agenda of Regulatory and Deregulatory Actions for the DOL, DOL proposed a rule whereby it is conducting a regulatory review and is considering input from stakeholders to determine appropriate regulatory actions regarding “Employment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act.”²³

Recommendation by NCD Moving Forward Concerning Tribal Land Vocational Rehabilitation Developments

14. The Federal Government should address the disparity in federal programs and services for American Indians residing on tribal lands. Concerning tribal land vocational rehabilitation, NCD has elected to publish a report in the coming year with relevant

recommendations that will review an NCD 2003 report and compare findings and uncover new disparities via talking circles with tribal citizens.

Tribal Lands Vocational Rehabilitation Developments

In 2023, in coordination with the National Indian Council on Aging, NCD’s American Indian and Alaskan Native toolkit, developed many years ago, was updated.²⁴ This toolkit addresses the issue of the disparate treatment between funding for vocational rehabilitation (VR) programs for states and territories versus tribal lands and the persistent challenges that disparity creates. Tribal Vocational Rehabilitation Programs and American Indian tribes located on federal and state reservations are not eligible for the guaranteed annual funding that is provided to each state and territory. Funding for American Indian VR is through an American Indian Vocational Rehabilitation Services discretionary grant and is a competitive bid process; the grant provides funding for five years. The estimated average size of awards is approximately \$531,000. Not all tribes have a VR program, and tribes with an existing VR program

are not guaranteed funding during the next funding cycle, thus creating a lack of continuity in VR services to its tribal members. Tribes that have never had VR funding could be awarded a grant for the first time which presents startup and capacity building challenges. The way VR funds are allotted creates additional barriers for tribes who are attempting to provide a much-needed service.

The Council of State Administrators of Vocational Rehabilitation (CSAVR) collaborates

[The NCD American Indian and Alaskan Native] toolkit addresses the issue of the disparate treatment between funding for vocational rehabilitation (VR) programs for states and territories versus tribal lands and the persistent challenges that disparity creates.

with a variety of partners and stakeholders in VR. The Consortia of Administrators for Native American Rehabilitation (CANAR) is a key partner in public VR and the 81 programs that provide vocational rehabilitation services to Native Americans and

Alaskan Natives, which are funded under the Rehabilitation Act.

NCD is finalizing a report on the experiences of people with disabilities living on tribal lands. The report will address the disparity in federal programs and services for American Indians residing on tribal lands. This report will review NCD’s 2003 report²⁵ and compare findings and uncover new disparities via talking circles with tribal citizens.

Section 4: Housing After Disasters

Undoubtedly, accessible homes are a critical issue for many people with disabilities. This is a policy area that intersects with disasters and how a person with a disability might move forward in tending to their accessibility needs following a disaster. Accordingly, developments concerning the intersectionality of these policy areas is something NCD has monitored.

Housing After Disaster Developments:

Survivors with disabilities can now use Federal Emergency Management Agency (FEMA) funding to make certain accessibility improvements to homes damaged by a declared disaster. This

Survivors with disabilities can now use Federal Emergency Management Agency (FEMA) funding to make certain accessibility improvements to homes damaged by a declared disaster, . . . making their homes even more accessible than they were before disaster.

FEMA's interim final rule (IFR), which applies to emergencies and major disasters declared on or after March 22, 2024, provides FEMA funding for accessibility improvements to homes damaged by a declared disaster.

change helps survivors with disabilities improve their living conditions by making their homes even more accessible than they were before disaster. Previously, FEMA could only help with accessibility items directly damaged by the disaster or that were not present before the disaster but are required due to a disaster-caused disability.

FEMA's interim final rule (IFR), which applies to emergencies and major disasters declared on or after March 22, 2024, provides FEMA funding for accessibility improvements to homes damaged by a declared disaster. The new regulations provide funding for accessibility features regardless of when or how the disability was acquired.

Section 5: Counting the Disability Population

US Census

The Census Bureau issued a notice informing the public that it planned to change the yes/no disability questions that are currently used in the US Census (American Community Survey [ACS] questions) to questions that would be used in a manner that would cut the estimated population of people with disabilities from 13.9 percent to 8.1 percent, with no clear explanation for why, and without input from disability stakeholders during the process of decision-making.

Recommendation Made by NCD Concerning the US Census

15. The Census Bureau should fully engage the disability community and continue to work toward finding a manner to better count the disability population in the United States. This should include the active input of those with expertise in the field of disability, including researchers, and offices within federal agencies that focus on people

with disabilities, including HHS’s National Institute on Disability, Independent Living, and Rehabilitation Research, and the broader stakeholder community. The Census Bureau

The Census Bureau . . . planned to change the yes/no disability questions that are currently used in the US Census . . . to questions that would . . . cut the estimated population of people with disabilities from 13.9 percent to 8.1 percent.

should maintain the then current questions in the ACS until a set of questions is developed that can most accurately count people with disabilities in the United States. Going forward, the Census Bureau should

include all relevant information related to its proposed actions in its Federal Register notices so individuals can provide informed comments, and the Census Bureau should post

public comments as they are submitted to increase transparency and encourage engaged, meaningful participation from the public.

US Census Developments:

In February 2024, the Census Bureau announced that it would not implement these changes in the 2025 ACS and would engage with disability stakeholders to help determine how it will move forward.

Section 6: Technology

As technologies advance, and the use of web and mobile applications becomes increasingly more paramount in people's daily lives, it is vital that those web and mobile applications be accessible in compliance with disability rights laws. Digital access is not an area that people with disabilities can afford to be excluded from.

Recommendation by NCD Moving Forward Concerning Digital Access Regulation

16. DOJ should ensure focused implementation and robust monitoring and enforcement of its final rule concerning the accessibility of services, programs, and activities offered by state and local government entities through web and mobile applications.

Digital Access Developments:

DOJ issued its final rule revising the regulation implementing Title II of the ADA. The rule

establishes specific requirements, including the adoption of technical standards to ensure that the services, programs, and activities offered by state and local government entities through web and mobile applications are accessible to the public. People with disabilities, including

The final [DOJ ADA Title II] rule establishes specific requirements, including the adoption of technical standards to ensure that the services, programs, and activities offered by state and local government entities through web and mobile applications are accessible to the public.

people who are blind, deaf, and hard of hearing, and people with other disabilities, face difficulties accessing public programs and services, including emergency information, courts, healthcare providers, schools, voting information, parking, permit applications, tax

payments, and transit updates. In the absence of these technologies being accessible, it can be challenging or impossible for people with disabilities to access critical services. As a result, individuals with disabilities may be excluded from accessing public services that other people use with ease. NCD welcomes this positive step forward by DOJ.

Section 7: Other Issues to Watch

Tax Code

NCD continues to engage in ongoing discussions with the Internal Revenue Service to advocate for a review and update of the current tax code and policies. Our goal is to ensure a fair tax system that is inclusive of individuals with disabilities. The impetus for these meetings began during the COVID-19 pandemic in late 2020 when many businesses were forced to shut down, and employees were required to stay at home. Attorneys for a blind employee contacted NCD about a Louisiana unemployment appeal determination that ultimately concluded that a blind woman in the sheltered workshop was not an employee but rather a rehabilitation client. For this reason, despite working at the facility just like any other employee for years, she was

ineligible for unemployment benefits when the workshop closed due to the COVID-19 pandemic. NCD immediately started researching whether this was an isolated incident or a systemic problem. Through this research, NCD identified an outdated Revenue Ruling from 1965 specific to sheltered workshops that may be inappropriately applied in order to classify people with disabilities as either rehabilitation clients or independent contractors, and not employees. Consequently, this keeps putative employees off employers' payroll. While the woman and her attorneys thought she was an employee, the Louisiana Workforce Commission concluded that she was a rehabilitation client for unemployment purposes. NCD continues to research this topic for an anticipated report on the topic in the near term.

Section 8: Conclusion

The collective efforts of the Executive and Legislative branches are essential to advancing policy that supports the goals of the ADA: equality of opportunity, economic self-sufficiency, independent living, and full participation of people with disabilities in all aspects of society, regardless of type or severity of disability. While the past year marked

significant progress in areas like healthcare and transportation, it is crucial to acknowledge that many challenges persist for those whose primary struggles remain unaddressed. In the coming years, it is imperative to rectify these policy shortcomings and continue building on the positive strides made in the fight for disability rights.

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