



The AT Messenger

bringing technology to you

Delaware Assistive Technology Initiative (DATI) • Volume 13, No. 2 • Spring 2005

Americans with Disabilities Dealt Blow by President's Budget

Beth Mineo Mollica,
DATI Director

Millions of Americans with disabilities were dealt a huge blow in early February with the release of the President's FY 2006 Budget. Among the programs devastated by the budget were the state Assistive Technology Programs, which the President proposed to eliminate completely. This blow is especially ironic because Congress passed, and the President signed, the new Assistive Technology Act of 2004 just a few months ago. The new law mandated that states offer a variety of AT supports, including equipment demonstrations, equipment loans, equipment recycling programs, and alternate financing for AT.

With compelling evidence that state AT Programs benefit communities, the economy, businesses, and people with disabilities, Congress worked hard to see that critical assistive technology programs could operate in every state and US territory. The legislation, passed with unanimous bi-partisan support, sent a clear message that our government supports a federal investment in people with disabilities. While the President's budget delivered a devastating blow, Congress has the power to remedy the situation through its own budgeting process.

The Chairs of the Bipartisan Disability Caucus in the House recently wrote a letter to the Chair of

the House Appropriations Committee requesting \$29.8 million for programs funded under the Assistive Technology Act. Forty members of Congress—33 Democrats and 7 Republicans—added their signatures to this request. It is important that members of Delaware's Congressional delegation—Senator Biden, Senator Carper, and Representative Castle—hear from

**Focus on
Community
Living**

Delaware residents about what would be lost if funding is not restored. DATI would not be able to continue the operation of the Assistive Technology Resource Centers (ATRCs) in each county, eliminating opportunities for no-cost consultation, training, equipment demonstration, and short-term loan of equipment. This newsletter would cease publication, and program features like the Equipment Exchange, the Funding Guide, and the website would not be sustained. No other entities at the state level are positioned to provide these services to people with disabilities, of all ages, in all environments.

The most effective ways to reach Delaware's congressional delegation are via phone, fax, or email. Regular mail is discouraged because of frequent disruptions and delays in delivery due to security issues. Word from Washington is that spending bills are on the fast-track, so make your opinion known without delay!

Contact information for Delaware's Delegation:

continued on page 2

INSIDE THIS ISSUE:

<i>Delaware Outdoor Opportunities</i>	2
<i>Check Out Our Newest Additions</i>	3
<i>New AT Lemon Law</i>	5
<i>The AT Bargain Basement</i>	7
<i>Delaware Recycles AT</i>	9

Americans Dealt Blow by President's Budget (continued)

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Delaware Offers a Wealth of Outdoor Opportunities

*Dan Fendler, AT Specialist
Sussex County ATRC*

As I sit and write this, it is the beginning of March and it feels like winter will never end. But, each day gets a little longer and warmer and it will soon be nice enough to comfortably get back outdoors. With that in mind, let's take a look at a few accessible options for those readers who need them.

The Junction and Breakwater Trail

Good news for Sussex County residents—a new bike trail has opened that will eventually connect Lewes and Rehoboth Beach. The 12-foot wide, crushed stone trail is designed for bicycles, but the surface is suitable for wheelchairs and battery operated devices such as scooters.

The trail can be accessed several ways. There is a parking lot (56 car capacity) at the northern trailhead off of Wolfe Neck Road (Route 1 to Munchy Branch Road). There is also a trailhead off of Holland Glade Road with parking located behind the Tanger Outlets Seaside shopping area.

The trail is absolutely stunning. It is artfully constructed to wind through farmlands, woodlands, wetlands, and more. There are a few spots along the trail where the view will take you back to a time before Delaware became the First State. From

the trailhead, the trail connects to the old railroad bed alignment, which it follows for 5/8 of a mile, as it gradually rises above the surrounding wooded area, to the existing Holland Glade Bridge. This former railroad bridge spans 80 feet and was built in 1913. The existing concrete bridge abutments and steel girders were rehabilitated and a new wood deck, scenic overlooks, and railing were installed. The trail departs from the old railroad alignment just south of the bridge and meanders through woodlands and farmlands until it crosses Holland Glade Road. If you continue across Holland Glade Road, you will travel through more woodlands and come out on Hebron Road, just east of the carwash.

Before you venture out on any trail, there are some important safety considerations to address, particularly for wheelchair users. Make sure that your chair is in good working order. For power chair or scooter users, make sure that your battery pack is fully charged. In case of an emergency, bring along a fully charged cell phone and a friend or two. Parts of the trail are remote and it is always advisable to use the buddy system.

Kent County—Off the Beaten Path

I wanted to give readers in the northern counties at

continued on page 3

Outdoor Opportunities (continued)

least one outdoor option to consider. The parks I visited in Kent and New Castle Counties did not have accessible trails. If you would like to experi-



Ted Harvey Wildlife Area, Photo by Dan Fendler

ence nature from the comfort of your vehicle, the Ted Harvey Wildlife Area is certainly worth checking out.

Known primarily to hunters and bird watchers, the Ted Harvey Wildlife Area is located just south of the Dover Air Force Base off of Kitts Hummock Road. Not all of the roads in the wildlife area are paved, but they are certainly passable. From the comfort of your vehicle, you will have access to a wide variety of views, and ample opportunity to see migrating birds. The Delmarva Ornithological Society lists the Ted Harvey Wildlife Area as one of the birding hotspots in Delaware. Here is an excerpt from their website, www.dosbirds.org, relative to the Ted Harvey area:

There is a private house about 1/4 to 1/2 mile down the road. Here a side road runs to the left and goes to the Bay. Either or both roads may be closed on any given day. There is good land birding along the side road, and excellent shore-birding at the end along the Bay shore. Near the end there is a small sign on the left forbidding further passage by car. Although there is no gate, the rule is enforced. Park here and walk along the causeway to the beach (100 yards or so). Walk south along the shore of the Bay from the end of the road. Return to the house and turn left on the main road. Where the road takes a sharp left (with a smaller road going straight) take the left

fork. The impoundment at the end of this road is excellent. The rare-to-casual White-winged Tern has been seen more frequently at this impoundment than anywhere else in Delaware.

If you would like to do some fishing, there is also a small accessible fishing pier in a pond within the Wildlife Area.

If you are a hunter, there is an organization that helps hunters with disabilities. Known as Buckmasters American Deer Foundation (BADF), a Dis-



Ted Harvey Wildlife Area, Photo by Dan Fendler

abled Services program was established in 1993 to provide hunting opportunities to people with disabilities. According to BADF, an estimated 1.7 million people with severe physical disabilities enjoy hunting and shooting sports in the United States. The organization feels that there are many people with disabilities who would get involved in shooting and hunting sports if only given some encouragement and an opportunity. For more information about the program at the Ted Harvey Wildlife Area, visit BADF's website, www.badf.org, follow the "Disabled Hunters" link and select "Regulations & Accessible Locations in Your State," then select Delaware. There are also links to adaptive hunting equipment on the BADF website.

Wherever your interests lie, we certainly hope that you have a wonderful summer season. As always, if you have any questions or need additional information, please contact your local Assistive Technology Resource Center. ■

Check Out Our Newest Additions...

Since DATI's Assistive Technology Resource Centers (ATRCs) opened in 1992, they have made thousands of no-cost AT loans to people in Delaware. One of our biggest challenges is maintaining an up-to-date equipment inventory. We

want to make the latest technology available to our customers, but we can only do that when we have the financial resources to support new equipment purchases.

continued on page 4

Newest Additions (Continued)

Many new devices have been added in recent months, and we are very grateful to the funding sources that made these purchases possible: the U.S. Department of Education, National Institute on Disability and Rehabilitation Research, and the Delaware Developmental Disabilities Council.

- **AlphaSmart Neo**, AlphaSmart
- **Amplified Cordless Phone with Caller ID**, Clarity
- **Amplified Listener**, Radio Shack
- **Automatic Jar Opener**, Black & Decker
- **Automatic NiteLite**, AmerTac
- **BigKeys Keyboard**, Infogrip
- **Cause and Effect Cinema**, Don Johnston
- **Cinema II Life Skills**, Don Johnston
- **Clamp on Lamp with Magnifier**, Tensor
- **Clicker Software**, Crick Software
- **ClozePro Software**, Crick Software
- **Conference Microphone**, Williams Sound
- **Co-Teaching Students with Autism**, Attainment
- **Directron Left-Handed Keyboard**, Sejin Electronic



GoTalk 20+ by Attainment

- **Dvorak Keyboard**, Ergonomic Resources
- **Easy Recall Answering Machine**, Clarity
- **Ergonomic Optical Mouse**, 3M
- **Flashing Door Chime**, Style Selections
- **Glide Point Touch Pad**, Cirque
- **GoTalk 20+**, Attainment
- **Hands Free Cell Phone Amplifier**, Earware
- **Hands Free Voice Operated TV Remote**, Accenda
- **Home/Office Intercom**, Westinghouse
- **Indoor Light Control**, AmerTac
- **Indoor/Outdoor Light Sensor**, Regent Lighting Corp.
- **In-Line Handset Amplifier**, Ameriphone
- **I-Zone Mini Photo Scanner**, Polaroid
- **Lamp Socket Module**, Radio Shack
- **LoTTIE Kit for Math**, Onion Mountain Technology
- **LoTTIE Special Papers Kit**, Onion Mountain

Technology

- **Mediplanner II Pill Dispenser**
- **Mimio Electronic Whiteboard**, Mimio
- **Motion-Activated Light Adapter**, Lamson Home Products
- **Nifty Nabber** (reacher), Unger
- **P-Switch**, Prentke Romich Co.
- **Pillbox Timer**, LifeWise
- **Pocket Speak and Read VCO**, Krown Mfg.
- **Pocket Talker Pro**, Williams Sound
- **Press to Play**, Don Johnston
- **Reader Rabbit's Reading**, The Learning Co.
- **Recipes for Success**, Adaptivation
- **Reizen Low Vision Talking Calculator**, Maxi-Aids
- **Remote Command Center**, Radio Shack
- **Remote Control with Key Chain Transmitter**, General Electric
- **School House Rock! Grammar Rock**, The Learning Co.
- **School House Rock! Math Rock**, The Learning Co.
- **Sequencer**, Adaptivation
- **Slant Board**, Enabling Devices
- **SmartNav** (hands-free mouse), Natural Point
- **Storybook Weaver Deluxe**, The Learning Co.
- **Switch Friendly Games**, Inclusive TLC
- **SwitchIt! Hygiene, People, & Weather**, Inclusive TLC
- **Taction Pads**, Adaptivation
- **Talking Caller ID w/Call Waiting ID**, ClassCo
- **Tech/Speak**, AMDi
- **Teen Tunes Plus**, Don Johnston
- **Thinking Reader** (Bud, Not Buddy; Dragonwings; Esperanza Rising), Tom Snyder Productions
- **Touch Dimmer**, Lamson Home Products
- **Touch Window** (17"), Edmark
- **Universal Amplified Handset**, Walker
- **Voice Activated Phone Dialer**, Voice Zone
- **Voice Operated Lamp Switch and Dimmer**, Salton
- **Voice Pal and Keyguards**, Adaptivation
- **Weekly Medication Tray**
- **Wireless Remote Control System**, AmerTac
- **Word Munchers Deluxe**, The Learning Co.
- **Wordbar for Windows**, Crick Software
- **Write:OutLoud to Go**, Don Johnston ■

New AT Lemon Law Aids Purchasers of AT

Laura Waterland, Senior Attorney,
Disabilities Law Program

Assistive technology (AT) can mean the difference between independence and isolation, community living and institutional living. AT can be expensive, too.¹ And, in some unfortunate circumstances, it can be defective. Like any consumer, a person with disabilities purchasing AT can get stuck with a "lemon"—a new piece of equipment that just does not work.

Until recently, people buying AT were truly stuck. Most equipment came with no warranty or maybe a 90-day limited warranty, if they were lucky. As of June 29, 2004, purchasers of AT in Delaware have the protection of the Assistive Technology Device Warranties and Consumer Protection Act.² This law is conceptually similar to auto lemon laws that protect new car buyers when they purchase cars with substantial irreparable defects.

Many states have passed AT Lemon Laws.³ Louisiana passed the first AT Lemon Law and it has been used as a model for many states, including Delaware.⁴ Louisiana's comprehensive law covers not only wheelchairs but all types of assistive devices, including, without limitation, computer technology, environmental controls, and hearing aids. Other states, such as Maryland, have more limited protections for wheelchairs only. Unfortunately, the hearing aid manufacturers and sellers have been successful in some states in getting hearing aids excluded from these laws. The Delaware AT law does apply to hearing aids.

Lemon laws do have certain limitations. The protections only extend to new equipment. In

Delaware, the law covers new equipment, leased equipment, customized equipment, and demonstrators that are then sold. Assistive technology is defined to include "any item, piece of equipment, or product system designed and used to increase, maintain, or improve the functional capabilities of individuals."⁵ The law includes a non-exhaustive list of possible AT that is covered: manual and power wheelchairs and other mobility equipment; hearing aids; telephone communication devices; and other communication technology; computer equipment for individuals who are visually impaired and those with communication disabilities; environmental control units; and any mechanical aid that increases, maintains, or improves the functional capabilities or health and safety of an individual with disabilities.

The law extends to a system as a whole, and to its components. So, for example, if you purchase a power chair with a customized seat that the supplier has purchased from a different manufacturer, the chair is covered, as is the seat. Not all equipment is covered—remember it has to be designed and used to increase or maintain function for people with disabilities. The law would not cover an electric toothbrush, unless the toothbrush was specifically designed for people with disabilities.

Generally, manufacturers are not required to give express warranties that their goods are not defective, or that they will back up their products, absent

continued on page 6

1. Power wheelchairs can easily exceed \$15,000 in cost. See data from 1994 NIDRR publication: www.abledata.com/abledata_docs/powwch.htm
2. 6 Del. Code Chapter 50B
3. Go to www.resna.org/taproject/policy/community/lemonover.html for a review of state laws. Also www.nls.org/conf2003/lemon-laws.htm; and www.usatechguide.org have lists of states with some sort of lemon law protection and other related links.
4. La. Rev. Stat. Sections 51:2762 to 2767
5. Section 5001(B)(1)

New AT Lemon Law (continued)

some statute that requires them to do so.⁶ The Delaware AT Lemon Law requires manufacturers who sell or lease new AT to supply a minimum one-year warranty that the AT device will be free from any defect or condition that substantially impairs the use, value, or safety of the AT device.⁷ If the manufacturer does not give the express warranty at the time of lease or sale, then the statute imputes one. Do not be discouraged if the documents of sale do not include a written warranty. Your new device has a warranty of one year even if the manufacturer does not say so in writing. Also, a consumer cannot waive his rights under this statute. Any waiver of rights that a manufacturer might try to obtain from a buyer is void.

So, what does a consumer do if he has bought AT that is not working? First, it must be clear that the device suffers from a "nonconformity," meaning a specific or generic condition, defect, or malfunction that substantially impairs the use, value, or safety of the device. Please note that the law covers substantial defects, not minor ones that do not prevent the item from working as intended.

Second, the consumer must make the manufacturer or its authorized dealer aware of the nonconformity and tender the device to the manufacturer or dealer for repair twice, or the device must be out of service for an aggregate of 30 cumulative days because of a nonconformity that has been reported to the manufacturer or dealer. This process is called "a reasonable opportunity to repair."

A caveat—the defect must be reported and the manufacturer given an opportunity to repair a non-

conformity within one year of delivery of the item. The Delaware AT Lemon Law only covers the first year after delivery. Beyond one year, other remedies may be available, such as a claim under the UCC, but the lemon law no longer applies.

After a reasonable opportunity to repair is made and the nonconformity is not repaired, the manufacturer must either accept return and refund the full purchase price, or accept return and give the buyer a comparable new assistive technology device. The choice of remedy belongs to the consumer, not the manufacturer. The manufacturer must pay all "collateral costs," such as shipping. There is a provision that requires the manufacturer to reimburse rental of a device while the purchased item is out for repair under certain circumstances. Manufacturers are also required to disclose to a buyer or lessee that a piece of equipment being offered for sale or lease has been returned by a buyer or lessee and the reasons for the return.

If a consumer suffers any harm or damages because a manufacturer has not complied with the lemon law, the consumer can sue for damages, including double damages for out-of-pocket pecuniary losses and attorney fees. The law creates a private right of action and the consumer does not have to rely on the government to enforce this statute.

There are other consumer law protections that may apply to the purchase of new AT.⁸ As stated before, the UCC covers sales transactions generally. Purchasers of AT should pay special attention to the warranty created when a manufacturer or dealer makes representations regarding things a device

continued on page 7

6. Article II of the Uniform Commercial Code (UCC) governs sales transactions of goods, generally. See 6 Del. Code Article 2. Many transactions do trigger implied warranties under these laws, such as that a product is "merchantable" or, in some circumstances, that the product is "fit for a particular purpose." These warranties may exist unless a manufacturer expressly disclaims them in a certain way. A buyer who has bought defective AT may well have claims and rights under the UCC as well as the lemon law.
7. Section 5003B(a)
8. These are general, brief descriptions of other possible avenues for legal relief when a consumer has purchased defective AT. Consumers need to consult with an attorney to find out whether they have enforceable rights under these laws. Also bear in mind, as always, that there are time limits for enforcing consumer protection rights.

New AT Lemon Law (continued)

can do that are specific to the consumer. This implied warranty of "fitness for a particular purpose" is frequently created when a device has been customized in some way. Make a contemporaneous record of discussions and/or correspondence regarding the purchase of your device.

The Magnuson-Moss Warranty Act is a federal law that regulates, simplifies, and standardizes manufacturer warranties.⁹ It does not require warranties but regulates the way manufacturers communicate with consumers and gives consumers a cause of action not only for breaches of the act but also for breaches of the warranty itself.

Finally, Delaware has several other consumer protection statutes, most notably the State Unfair and Deceptive Practices Act and the Consumer Fraud Act, both found in Title 6, Chapter 25 of the Delaware Code and the Consumer Contract Statute, 6 Del. Code Section 2732. Both of these laws can be enforced by the Delaware Department of Justice as well as by private right of action. The Consumer

Fraud Act generally prohibits the use of misrepresentation or other deception in the sale or lease of merchandise. The Unfair and Deceptive Trade Practices Act prohibits 12 practices likely to create confusion. There is no direct consumer remedy under this law. It is enforced by other aggrieved businesses. However, there are heightened penalties for violations directed at the elderly and people with disabilities under Chapter 25.¹⁰ Finally, the Consumer Contract Statute provides treble damages against individuals who knowingly or recklessly omit information that is required to be disclosed in consumer contracts, distort or obscure terms, or create a likelihood of confusion or misunderstanding in consumer contracts.

Consumers should of course obtain legal advice when pursuing relief and should always maintain good records. Owners of AT have an arsenal of laws to protect them in the purchase of new AT and should not be afraid to pursue the remedies that are available if their deal goes bad. ■

9. 15 USC Section 301-2312

10. 6 Del. Code Section 2580 et seq.

The AT Bargain Basement

Marvin Williams, AT Specialist
Kent County ATRC

Welcome one and all to another pulse-pounding edition of the AT Bargain Basement. I am Marvin, your guide on this tour of all technology assistive and costing less than \$100. I also try to find you bargains that are available in your local stores. However, you might find that some of the biggest bargains are available online, so I will feature web bargains now too.

In this installment of the Basement, I am going to go over some suggestions offered by one of my readers. Eleanor Gregory is an occupational therapist with Easter Seals in Dover. She is a fan of the Basement and had some suggestions for things people could do to create simple AT solutions at home. The first of Eleanor's suggestions was to use

the non-slip drawer lining I mentioned in a previous column as a non-slip pad for a mattress. Place the pad between the mattress and the box spring to keep a slippery mattress in place. This is especially handy on a low-airloss mattress or on a mattress that is sealed for an incontinent user. If you have difficulty getting in and out of bed because your mattress keeps moving, a non-slip pad might also be a solution for you as well.

A second idea Eleanor had was to use simple pipe insulation for a built-up handle on eating utensils. I recommend taking a piece of your flatware with you to the hardware store to make sure you get the correct size piping. You can get pipe insulation

continued on page 8

The AT Bargain Basement (continued)

from **Lowe's**® and **Home Depot** for less than \$10 for a three-foot section. That would give you plenty of insulation to handle a good number of utensils. Pipe insulation is also good for building up the handles of pens, pencils, toothbrushes, and hair brushes. If you know of any AT tips, please feel free to send them along, and I will share them with everyone!

Switching gears a bit, I recently found a steal of a deal at **Wal-Mart**®. The **Omron Automatic Wrist Blood Pressure Monitor with APS** is a great blood pressure monitor with a large, easy-to-read display available for only \$74.88. Now for those of



Omron Automatic Wrist Blood Pressure Monitor with APS

you who do not know, APS stands for automatic positioning sensor, which is how the device lets you know it is in a good spot for an accurate reading. While other blood pressure monitors are certainly available for less money, I like the large display on this one. Also, for being compact, it does have good-sized buttons, making operation easy. As with anything, try it out first or at least take a good look at it, to make sure it will work for you.

Staying with the **Wal-Mart** connection for just a little longer, if you have access to a computer and are in the market for a shower chair, you might want to check out www.walmart.com for deals on shower chairs. For my money, the best deal I saw was the **LifeCare** shower chair with swing-away arms and an EVA soft seat cover. The chair is \$79.23 and worth every penny and more. First, it comes with a backrest that can be easily removed or installed without any tools (after initial assembly). The second nice feature of this shower chair is the EVA foam seat cover. EVA refers to the type of foam used in making the seat cover. The cover is sealed, so you do not have to worry about the foam getting wet and ruined. The soft seat is a nice touch if most shower chair seats feel a little too hard for you. Last but not least are the swing-away arm rests. Normally, if you find armrests on a shower

chair, they are in a fixed position. On this chair, you can lift an arm out of the way, making it easier to get in and out of the shower chair. If all of these things sound just right for you, then you definitely want to look into the **Life-Care** shower chair.

Remember, it is only available from **Wal-Mart** online at www.walmart.com.



Not to be outdone, Target® LifeCare shower chair with swing away arms

Not to be outdone, **Target**® has some nice deals available on their website. For those of you who use a pill box, **Target** has the 14-day tapestry pill box for only \$11.99. What I like about this pill box is that it has all of the normal pill box functions without the standard pill box look. It features compartments for taking four sets of pills each day. Each day's worth of pills can be removed separately from the rest of the case and each compartment is labeled in Braille as well as with standard print. The outside covering is attractive, and has a special bonus flap that can be used for carrying prescriptions, pill reminders, etc.

Another great deal offered at **Target** is a combination hot/cold pack. The **Thermal Aid Therapeutic Hot/Cold Bear Pack** is a nice way to get a child to accept a cold pack or a warm compress. It looks like a teddy bear, not a thermal pack, thus its appeal. It is a little pricey at \$19.99, but considering what you are getting and how easy it may make getting someone to take a thermal pack, it is well worth the cost. Both of these items are available only through **Target's** website, www.target.com.

And with those last two items, I must bring this edition of the Basement to a close. I would like to thank Eleanor for her very helpful hints, and I encourage all of you to let me know about any hints, tips, or bargains you may find. So until next time, remember: just because it is inexpensive does not mean it has to be cheap! ■

DATI Equipment Loan Policy

DATI has a wide variety of equipment at the Assistive Technology Resource Centers for the primary purpose of demonstration and short-term loan. The policy for the loan of the equipment is as follows:

The standard loan period is two weeks, defined as the day borrowed (e.g., Monday the 10th) to the same day two weeks later (e.g., Monday the 24th). Loans may be extended providing there are no names on the waiting list and/or that an extension will not interfere with an existing reservation. The maximum loan period is four weeks.

A maximum of four devices may be borrowed during any single loan period. However, combinations of devices may be treated as a single device if the components are interdependent—either operationally, or because one component is required for the user to access another. Equipment loans across state lines are not permitted. Equipment must also remain in Delaware throughout the loan period. ■



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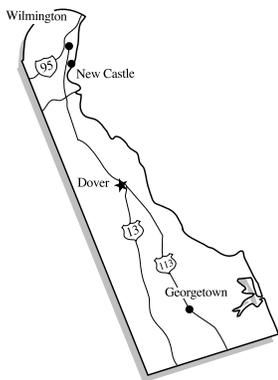


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(302) 328-ATRC; (302) 328-2905
(TDD)

Kent County ATRC
Easter Seals of Delaware and Maryland's Eastern Shore
100 Enterprise Place, Suite One
Dover, DE 19904-8200
(302) 739-6885; (302) 739-6886 (TDD)

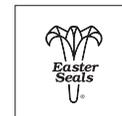
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Cheer Community Center
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Nemours

Alfred I. duPont
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Children's Clinic

Creating solutions. changing lives.