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Center for Disability Rights, Inc.

February 4, 2015

Re: Written Testimony to the Joint Budget Committee for Human Services on the 2015-2016 Executive Budget

Thank you to the Joint Committee for this opportunity to comment on the 2015-2016 Executive Budget. My name is Adam Prizio and I am the Manager of Government Affairs at the Center for Disability Rights. The Center for Disability Rights (CDR) is a disability led, not-for-profit organization headquartered in Rochester, New York. CDR advocates for the full integration, independence, and civil rights of people with disabilities. CDR provides services to people with disabilities and seniors within the framework of an Independent Living Model, which promotes independence of people with all types of disabilities, enabling choice in living setting, full access to the community, and control of their life. CDR works for national, state, and local systemic change to advance the rights of people with disabilities by supporting direct action, coalition building, community organizing, policy analysis, litigation, training for advocates, and community education.

This year, the State has the opportunity to make real and meaningful progress improving integration and community living for people with disabilities in New York. The 2015-2016 Budget contains a number of initiatives which will make this opportunity a reality, including the commitment to Community First Choice (CFC) and the allocation of CFC funding to further the goals of the Governor's Olmstead Plan, the proposed amendments to the Nurse Practice Act, and the process of consulting with stakeholders around the creation of an Office on Community Living. We are very excited about and strongly supportive of the ambitious direction that is laid out in the Budget for future years.

Many of the ambitious initiatives proposed in this Budget have potential for tremendous impact on the lives of disabled New Yorkers, but that impact will only improve our lives if the Committee ensures that these programs are fully accessible to all New Yorkers, including people with disabilities. We urge the Committee to make sure that all improvements to the human services infrastructure must improve accessibility to people with disabilities, so that we are better able to access these services when we need them.

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In addition, the human services infrastructure must be designed in such a way that it is easier for a person with a disability to remain in her home and receive necessary services, than for her to receive those services in a costly institutional placement. This is the only option that is consistent with the civil rights of the disabled person and the financial incentives of the State, particularly as the State implements CFC. We likewise urge the Committee to make community living a priority in all aspects of the human services budget.

The Nonprofit Infrastructure Improvement Grant Program must require grantees to improve accessibility for human services.

The budget calls for a \$50 million investment in Nonprofit Infrastructure Improvement Grants to improve quality, efficiency, and accessibility among human services non-profits in the state.¹ CDR supports this investment program as it will increase accessibility to human services for disabled New Yorkers. People with disabilities rely on human services to live in the community and lack of access to human services can serve as a barrier to community living. For this reason, CDR urges the Administration to only approve grant applications that specifically propose significant accessibility improvements.

It is unclear, however, whether nonprofit fiscal intermediaries who offer Consumer Directed Personal Attendant Services will be eligible to apply for grants through this program. Infrastructure improvement grants would help nonprofit fiscal intermediaries to become more accessible and, in turn, assist more individuals to live in the community. CDR urges the Committee to clarify that these nonprofit fiscal intermediaries will be eligible to compete for these grants.

Consumer Directed Personal Assistance Services must not be interrupted because of changes in federal labor law.

Despite the efforts of disability rights advocates to delay changes to the Fair Labor Standards Act Companionship Exemption, the US Department of Labor (US DOL) planned to implement a rule on January 1, 2015 that would have required the payment to attendants of travel time and time-and-a-half of base wages for hours worked over 40 per week. This rule did not come with additional federal funding to ensure that attendants would actually be paid more for their overtime hours. Without funding to pay the additional wages and benefits, fiscal intermediaries planned to cap attendant hours at 40. This left consumers at risk of institutionalization unless they could find additional attendants to work the hours above the cap, and disrupted the lives of consumers who were lucky enough to find someone to do that work. Governor Cuomo used Balancing Incentives Payment funds as a temporary fix to pay for some of the new overtime obligation.

The Governor's temporary funding was not needed because at the last minute, two court orders – issued on December 31, 2014 and January 14, 2015 – prevented the rule from coming into effect. Both court orders have been appealed by the US DOL, and it is possible the rule will be put back into effect as soon as six months from now. There is no mechanism, and no ongoing funding, to pay for the additional overtime costs if the appeal is successful. It is estimated that overtime for CDPAS attendants in New York State alone would have cost more than \$20 million in 2013. The State must commit to ensuring that these vital services are not interrupted by changes to the labor

¹ 2015 State of the State, p. 180

law, and that commitment must take the form of an allocation of funding which can be used to pay attendants for overtime if the labor regulation requiring that payment is upheld in the courts.

The State must establish and fund a living wage for consumer directed personal attendants.

The Budget calls for New York to raise the minimum wage to \$10.50 statewide, and \$11.50 in New York City in 2016.² The creation of a living wage is a laudable goal, and raising the minimum wage is a good step in this direction, but – even in this Budget – the State has not provided the funds needed to do this.

The State has established and funded a living wage for some attendants working in traditional home care. Unfortunately, other attendants – including those who work in the consumer directed model – have had their wages held flat for years because of cuts in Medicaid rates and implementation of managed care. Some managed care organizations have pointed to the fact that there are no living wage requirements as a reason that they are free to cut the rates for this program.

The Consumer Directed Personal Assistance Association of New York State has recommended that legislation be passed requiring managed care organizations and Medicaid to reimburse fiscal intermediaries an amount sufficient to pay attendants at a living wage, at 150 percent of the minimum wage, while still meeting all of their other financial obligations. Without adequate wages, individuals with disabilities will be unable to attract and retain workers, and in some cases will be forced into institutions, which are more costly than home and community settings, but which are guaranteed to be funded. For the sake of the State's own sound fiscal health, as well as the rights of people to live in home and community settings, the 2016 budget must establish and fund a living wage for CDPAS attendants.

CDR urges the State to increase funding for Independent Living Centers.

In order to realize the goals of the Olmstead Plan and the promise of independent living, the State must invest in the State's network of Independent Living Centers (ILCs). ILCs are at the forefront of ensuring that people with disabilities have the assistance we need to live integrated, independent lives in our communities. The core ILC services of skills training; individual advocacy; peer counseling; information and referral; and transition and diversion are absolutely necessary to ensure that we have the right to live independently and in our own homes and communities rather than institutions. In addition, each ILC provides additional services that address the particular challenges and needs of the community or region where it is located.

The State has left ILC funding at the same level for the past decade, despite the fact that demand for ILC services has increased nearly 28% over that same period. In addition, the costs of operating a center, employing staff, purchasing insurance, and providing services have increased as well. Many ILCs have had to lay off essential staff in order to make ends meet and, without additional funding, will not be able to ensure that people receive the services they need to live in the community.

In addition to the millions of dollars which ILCs can help the State to receive through CFC, ILCs also save the State a great deal of money that would otherwise be spent on costly institutional placements. Data from ACCES-VR indicates that the work of ILCs has saved the State more

² Education, Labor, and Family Assistance (ELFA) Budget, p. 310.

than \$1.4 billion since 2001, as ILCs have helped people who would otherwise be forced into institutions to remain in their homes and their communities. In light of the value that ILCs deliver, and the funding available through CFC, the State should invest in the health of all ILCs by raising the base funding level from \$12.3 million to \$18 million, an increase of \$5.6 million. This funding should be allocated in three ways. First, it must include the Center for Disability Rights as a State-funded Independent Center; second, it must allocate half of the remaining funding to increasing the funding of the centers whose funding levels are the lowest, and third, it should use the remaining funds to provide a cost of living increase to all Centers.

In conclusion, while the Executive Budget contains a number of ambitious programs which have great potential to improve the lives of all New Yorkers, it is essential that people with disabilities be included in these programs. In order to ensure that we are included, the Committee must make accessibility a priority in all human services programs, and must ensure that vital services and programs such as CDPAS and the ILCs are strong and are able to continue.

Thank you for your time,



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