

Center for Disability Rights, Inc.

February 3, 2016

Re: Written Testimony to the Joint Budget Committee on Workforce Development in the 2016-2017 Executive Budget

Thank you to Chairwoman Young, Chairman Farrell, and the members and staff of the Joint Committee for this opportunity to comment on the workforce provisions of 2016-2017 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 through the 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 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.

From a Disability Rights perspective, the most notable thing about Governor Cuomo's 2016 agenda is that issues important to the Disability Community are virtually nonexistent. The Governor emphasizes transportation infrastructure, environmental protection, homelessness, and raising the minimum wage, but all of these priorities, as presented, fail to include people with disabilities, even though housing and transportation are vital for the Disability Community, and New Yorkers with disabilities are among the lowest-paid workers in the state.

It is insulting to the Disability Community that the Governor has excluded us from this year's agenda altogether. Although he has called for increasing the minimum wage, he did not include funding to increase the wages for our Medicaid-funded personal assistants and has not addressed the problem that New Yorkers with disabilities can be excluded from even receiving minimum wage in New York. Accordingly, I wish to bring to your attention the following issues:

The budget process must create a rate and mechanism sufficient to pay CDPAS personal assistants for overtime as required by new federal regulations.

Federal Labor Regulations took effect in 2015 which require the payment of time-and-a-half of base wage to personal assistants for hours worked over 40 in a given work week, and payment

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for time that personal assistants spend traveling between consumers.¹ This regulation was not accompanied by federal funding to ensure that attendants would actually be paid more for their work. Without funding, fiscal intermediaries would be required to cap attendant hours at 40. Such a cap puts consumers at risk of institutionalization. During last year's budget, Governor Cuomo promised to provide at least \$20 million in funding in the Medicaid Base to pay for overtime and travel for Consumer Directed Personal Attendant Services (CDPAS) attendants in New York.

The Department of Health (DOH) has not implemented a rate or payment mechanism to ensure this funding is paid to CDPAS attendants. Instead, DOH implemented an across-the-board increase of \$0.34 per hour to both the CDPAS and home care rates, along with a statement that this increase was sufficient to pay for overtime not exceeding 10%. This amounted to approximately a 50% cut in the funding that was promised to CDPAS attendants. This approach is insufficient, as an across-the-board rate increase does not address the degree of overtime variance that Fiscal Intermediaries (FIs) experience. Nor does this policy ensure that FIs will receive any of this funding from Managed Care Organizations (MCOs). Instead the current approach punishes those FIs which offer disabled people the highest degree of control over their lives.

Despite the Governor's commitment to fully fund overtime for CDPAS attendants, the 2016 Budget simply maintains this mechanism, which is insufficient to pay for overtime and travel time for CDPAS attendants. CDR calls for the State to move forward with the creation of overtime and travel billing codes or code modifiers in order to ensure that people with disabilities who rely on CDPAS attendants are not forced into institutions.

The State must fund the minimum wage increases for CDPAS attendants.

A showpiece in Governor Cuomo's 2016 agenda has been the proposal to increase minimum wage to \$15 per hour.² The Governor has not, however, put his funding where his rhetoric is with respect to workers who provide State-funded Medicaid services for people with disabilities. To the contrary, the Governor's position on Medicaid-funded services is that the two minimum wage increases this year are "nominal" and that Medicaid providers can absorb these wage costs. The Governor has no problem calling out fast food companies for failing to pay workers, but when it comes to paying for workers that provide life-sustaining services, he seems unwilling to follow his own rhetoric.

On their own, these costs may have been nominal, but they come after years of repeated cuts and cost increases which have driven down reimbursement. In this context, these cost increases are not nominal. In fact, reimbursement rates for CDPAS FIs in 2015 were lower than they were in 2006. The CDPAS program is stretched too thin to accept this latest cost increase without allocated funding. The State must fund its minimum wage increase.

The State must propose and fund a wage premium for CDPAS attendants.

The work of personal attendants ensures that people with disabilities are able to live in the community and lead lives of our own choosing. This work is vital, not only to the lives of disabled people, but also the State of New York, which has a legal and moral obligation to secure the fundamental civil rights of its citizens and residents. CDR does not accept the Governor's

¹ 29 C.F.R § 213.

² 2016 Built to Lead Education, Labor, and Family Assistance (ELFA) Budget, pp. 163-164.

position that he should raise the wages of people who flip burgers, while failing to support the people whom provide vital supports to seniors and people with disabilities, including assistance with medications, ventilators, and other skilled tasks.

The State must propose and fund a state-wide wage premium for CDPAS attendants, over and above the minimum wage. Prior to repeated cuts and cost increases unaccompanied by funding, CDPAS attendants were paid well-above minimum wage. State policy has eroded their pay to the point that without a wage premium, attendants will leave the industry in favor of easier jobs which pay the same wage. Consequently, the Governor's minimum wage proposal will exacerbate the widespread attendant shortage which already keeps people with disabilities trapped in institutions.

Additional funding is also necessary to comply with the CMS conditions associated with Community First Choice (CFC). When CMS approved CFC, it directed the State to equalize the payments of developmental disability (DD) providers and other home and community based services providers. DD providers receive reimbursement rates over \$40 per hour, while CDPAS providers receive less than \$20 for equivalent or commensurable services. Failure to address this is discriminatory and could put CFC funding at risk.

Accordingly, we call on DOH and the State Department of Labor to conduct a study of wages and workers in CDPAS in order to determine the cause of the shortage of personal attendants and to recommend necessary changes, including the creation of a wage premium, in order to ensure the sufficiency of this workforce.

Include CDPAS and other community based services and supports in amendments to the prompt payment law.

The Budget includes a provision which would amend the prompt payment law for EI providers.³⁵ Under the proposed law, MCOs must identify defective claims within 15 days of receipt; unless a defect is identified in that time, the claim is deemed approved.

Late payments and rejected claims threaten not only EI providers but many providers whose services and supports are vital to the community integration of people with disabilities. Of particular note are CDPAS FIs which have struggled under reduced rates, loss of trend factors, and increased overtime costs for years. FIs are obligated to pay attendants for hours worked and should be assured of prompt payment for all qualified claims. Late payments and delays on the part of MCOs threaten the workforce upon which people with disabilities rely to live in the community. Accordingly, all community-based service providers should be included in the prompt payment law amendment the Governor proposes.

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. ILCs are absolutely necessary to ensuring that people with disabilities 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.

³ 2016 Built to Lead Health and Mental Health Budget, pp. 59-71.

Last year, the State provided a long-overdue funding increase of \$1 million dollars. This year, the budget proposes level funding. ILC services should be funded at a level that ensures centers are able to effectively serve the anticipated increase in people with disabilities living in the community thanks to CFC. The state is drawing down significant funds under CFC that should be dedicated to implementing the Olmstead Plan. A portion of this funding should be used to increase ILC funding.

Data from ACCES-VR indicates that the work of ILCs has saved the State more than \$1.8 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, the funding available through CFC, and the importance of ILCs in securing the civil right of people with disabilities to live in the community, the State should invest in the health of all ILCs by raising the base funding level to at least \$545,000 for each center.

CDR urges the State to end subminimum wages for workers with disabilities.

When Governor Cuomo raised the minimum wage for fast food workers, he did so because he believed that “[i]f you work full time, you shouldn’t have to live in poverty – plain and simple.”⁴ The Governor went on to say...

“[r]aising the minimum wage to \$15 an hour will add fairness to our economy and bring dignity and respect to 2.2 million people, many of whom have been forced to live in poverty for too long. My father’s words about helping those left behind in the shining city are not just a dream – they were true when he spoke them, and they still ring true today. We will overcome the skeptics and demonstrate to the American people that we can make this a better place because New York is the state of possibility. We can restore hope and opportunity, and we will do it with a \$15 minimum wage that ensures economic justice for all.”⁵

The Governor has now proposed to raise the minimum wage for all New Yorkers, except people with disabilities, who may, under the Governor’s minimum wage increases, continue to be paid subminimum wages for their work.

The State can end this shameful practice of paying disabled people pennies on the dollar by requiring operators of subminimum wage workshops to pay all of their employees the minimum wage as a condition of receiving State funding. “Economic justice for all” must include people with disabilities.

Disability-owned businesses must be included in the definition of Minority and Women-owned Business Enterprises

The Governor has called for the expansion of the State’s Minority and Women-owned Business Enterprises Program (MWBES) to include all contracts funded entirely by the State, rather than merely those contracts which are issued by state agencies.⁶ CDR calls for the State to include

⁴ Acting State Labor Commissioner Musolino Signs Wage Order Designating \$15/Hour Statewide Minimum Wage for Fast Food Workers, Press Release, Sept. 10, 2015, available at <https://www.governor.ny.gov/news/governor-cuomo-joined-vice-president-biden-announces-push-raise-new-yorks-minimum-wage-15-hour>

⁵ Id.

⁶ 2016 Built to Lead Transportation and Economic Development (TED) Budget, pp. 9-20.

business enterprises owned by people with disabilities in the definition of MWBEs, for the purpose of state contracting.

The purpose of the MWBE program is to improve the economic prospects and entrepreneurship opportunities of people who have historically been excluded from these things. It is well documented that disabled people experience poverty at significantly higher rates than non-disabled people, and that we are the targets of discrimination. Including people with disabilities in the MWBE program can address the problem that only about 17 percent of people with disabilities are employed by creating incentives for us to start our own businesses and participate more fully in the economic life of the State.

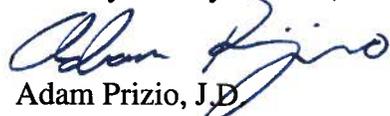
Paid Family Leave Act must include CDPAS.

The Governor has proposed to create a Paid Family Leave Act which would provide relief for individuals taking time off of work because of certain qualifying events.⁷ In general, CDR supports the provision of paid family leave, but has some concerns about the implementation of the specific proposal at hand. The qualifying events include the failure of a licensed home health care professional to appear for a scheduled shift. This language excludes consumer directed services because CDPAS attendants are not licensed by the State. The State should amend this qualifying event to include our attendants and address this medical model bias.

In conclusion, this year's Budget proposals do little to help people with disabilities or the workers our community relies upon to ensure that we can live in the community. Without including the workforce needs of the Disability Community, this year's Budget threatens to do great harm to New Yorkers with disabilities by effectively depriving us of workers who provide necessary services.

These issues and recommendations are necessary to include the Disability Community in the proposals which the Governor has introduced this year. State-funded provider organizations are stretched too thin to absorb this year's minimum wage increases without additional funding. Disability-specific organizations such as ILCs are likewise threatened by wage increases without additional funding. Workers whose work ensures and protects the lives, health, and civil rights of people with disabilities must not be left behind on a minimum wage; instead, they should receive a wage premium in order to attract additional workers to this workforce which has been stretched too thin. Without including New Yorkers with disabilities and the workers whose work ensures our civil right to live in the community, the workforce proposals in this year's Budget threaten to undermine the progress which the Disability Community has made, over many long years of struggle and advocacy, toward integration, equality, and integration into all that New York has to offer.

Thank you for your time,



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⁷ 2016 Built to Lead Public Protection and General Government (PPGG) Budget, pp. 120-166.

