

# Center for Disability Rights, Inc.

## EXECUTIVE DEFICIT REDUCTION PLAN TESTIMONY TO THE ASSEMBLY WAYS AND MEANS COMMITTEE

OCTOBER 21, 2009

The Center for Disability Rights, Inc. (CDR) is a non-profit service and advocacy organization devoted to the full integration, independence and civil rights of people of all ages with all types of disabilities. With services delivered in 13 counties in New York State and offices located in Rochester, Corning, Geneva and Albany, CDR represents the concerns of thousands of people with disabilities. Like many advocates, CDR is concerned about the impacts of the proposed Deficit Reduction Plan.

A recent report by the United Hospital Fund (April 2009) reaffirms the disability and aging advocates' claims that although New York State may offer a lot of long term care services, there is still a clear institutional bias. According to the report, the September 2007 enrollment in long term care in New York State breakdown was 33% institutional, 67% community-based services. However, the FFY 2007 spending breakdown was 53% institutional, 47% community-based services. That means that while the State has clearly made strides in shifting people from institutional to community-based settings, the State still spends disproportionately more on institutions than in the community. These findings also reaffirm advocates' claims that investments in community-based services allow the State to serve more people for the same amount.

Yet merely two weeks prior to the release of the Executive's Deficit Reduction Plan (DRP), Deborah Bachrach, Deputy Commissioner of the New York State Department of Health's Office of Health Insurance Programs, was quoted in *The Buffalo News* as saying that home care and personal care will be targeted for cuts.

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“That would mean possible cuts for home care and personal care – which, [Deborah] Bachrach acknowledged, could backfire by forcing more people into Medicaid-funded nursing homes. ‘But that has to be the focus because that's where the spending is,’ she said.”

Source: Medicaid crisis looms for state: changes could raise deficit to \$13 billion. *The Buffalo News*. Jerry Zremski, October 1, 2009.

To claim that home care and personal care are “where the spending is” is completely contradictory to the findings in the aforementioned report by the United Hospital Fund. The report analyzed the September 2007 MARS, FFY 2007 CMS-64, 2007 LTHHCP census, and 2006 RHCF-4 cost report – which derive from Department of Health data.

The release of the DRP solidified the State’s lack of commitment to preserving and enhancing community-based services. This attempt by the State to drastically reduce community-based services in long term care is unacceptable, illegal, and costly. It is a clear violation of the State’s requirement for compliance with the 1999 U.S. Supreme Court decision in *Olmstead* which holds, under the Americans with Disabilities Act, that services must be offered in “the most integrating setting” appropriate to a person’s needs. While the State has made strides in the past year to move toward an *Olmstead* plan, *Olmstead* is still a peripheral concept. The advocacy community has tirelessly worked with the State’s agency leaders, Legislature, and Executive to shift the *Olmstead* mindset from a service delivery directive, to what it truly encapsulates: civil rights.

People have the right to remain in their homes, which is what people prefer. While this statement has always held true, it can now be quantified by a recent report produced by AARP, which states “A vast majority (89%) of Americans age fifty and over want to remain in their homes as long as they can” (Providing more long-term support and services at home: why it’s critical for health reform. *AARP*, 2009). Every regulatory and administrative action and budget proposal that impacts people with disabilities should consider *Olmstead*.

According to the Governor's presentation on the proposed Deficit Reduction Plan (October 15, 2009), there will be "10% across-the-board cut to all remaining fiscal year local assistance spending with three main exceptions..." The 10% reductions will be effective November 15, 2009 through the end of the next fiscal year, March 31, 2010. There will be a 3.7% reduction thereafter to achieve the same cuts as the 10% initial impact. CDR has no delusions about the State's current fiscal climate. We recognize the need for drastic measures, but across-the-board cuts that will create significant long term harm to the State should not be the solution. Tailored, thoughtful, targeted reductions are the only way that the State will emerge from this budget crisis and avoid future pitfalls. Advocates across the state are willing to work the Executive and Legislature to arrive at a solution that will reduce the impact on the State's most vulnerable population.

New York State's fiscal crisis will only be exacerbated by the proposed Deficit Reduction Plan. Reducing already limited supports and services to people in less-costly settings will simply shift the burden toward more costly programs. As previously mentioned, we recognize that no programs are held harmless in the DRP and we also recognize that the message of "do not cut" is unconstructive at a time when the State is forced to make difficult decisions. However, a line item does not fully capture the nature of the proposed devastating cuts to people with disabilities. Cuts to Medicaid (\$287M), Supplemental Security Income (\$11.4M), Independent Living Centers (\$219,000), Timothy's Law (\$4.5M), Traumatic Brain Injury (\$426,000), and Expanded In-Home Services for the Elderly (\$2.3M), are just a few programs that keep people out of costly institutions and in the community.

Particularly in reference to Medicaid cuts, it is necessary to look at the bigger picture. For every dollar the State cuts to the state's Medicaid share, that is a direct cut to the federal match. This varies by program and is typically 1:1.5, but can be as large as 90%. That is akin to throwing away federal assistance- particularly at a time when the need for services like Medicaid in New York State is on the rise. For example, according to the DRP, the State intends to cut (or, as the Executive phrases it "save") \$24.5M in home care and \$27.5M in personal care. This amounts to a total loss including the current federal match (with the enhanced federal match as part of the last stimulus bill) of \$62M and \$69M respectively. If the state cuts the

proposed \$52M to home care and personal care, it will amount to a total cut of \$131M. People with disabilities need these services, yet providers will not be able to survive these cuts.

New Yorkers who require long term supports and services, such as seniors and people with disabilities, will not fall off the grid simply because their access to community-based services is restricted. Cuts to home care and personal care will result in increased institutionalization, which is *more* costly to the State. According to a 2009 study in *Health Affairs*, states that invest in home and community-based services actually experience long term cost savings.

“Justifications based on financial constraints can no longer be credibly offered as reasons for forcing such people into nursing homes and other institutions. HCBS programs may be one instance in which offering people greater choice also helps reduce costs.”

Source: Do Noninstitutional Long-Term Care Services Reduce Medicaid Spending? Home and community-based services help people with disabilities stay in their homes while reducing long-term care spending. H. Stephen Kaye, Mitchell P. LaPlante, and Charlene Harrington. *Health Affairs* 28, no. 1, Jan/Feb 2009.

For years, the Center for Disability Rights has made the claim that the State should reform its long term care system (which is where significant Medicaid expenditures occur) by shifting toward community-based services. The lack of long term vision by the State is precisely the cause of the State’s current fiscal crisis and, disappointingly, the State is once again searching for the quick fix solutions.

A few proposals have come forward to address the short term need, such as collecting due taxes on cigarettes, reducing the use of costly consultants, and eliminating the empire zone program. CDR also recommends restricting member items. While we realize that many of the member items are dedicated to community-based services, much of the money is used for pet projects and political gains. In an ideal budget climate, these would remain sacred, but this is the time for creative budgeting and it is unacceptable to spend funds on pet projects when services that

keep people in their homes and out of institutions are being cut. There must be more analyses of these proposals, but if there is any way the State can pull from these funding streams in an effort to minimize the impact on health care cuts, then they must be explored. However, while these actions could produce short term fixes, the State must not ignore the long term proposals that will save the State significant dollars.

Of the proposals presented by the Legislative leaders, none is more devastating than the Senate Minority's proposal to eliminate Medicaid state plan options. The reason that New York State includes these "options" in the state plan is because the State recognizes that these services are *not* optional; they are vital supports to low-income seniors and people with disabilities. This ludicrous proposal would call for the elimination of Medicaid coverage of prescription drugs, personal care, home- and community-based services, hospice, and case management services, just to name a few.

Personal care and home- and community-based services are among the least costly services in Medicaid. By eliminating these, New York State would reverse years of progress in long term care and would essentially shoot themselves in the foot by forcing this population into skilled nursing facilities – the most costly setting for long term care.

The State should be looking to shift people to less costly services; not looking to proposals that eliminate these programs. Significant savings could be realized if the State works to screen, refer, and shift people to less costly settings, such as personal care, Consumer Directed Personal Assistance Program (CDPAP), and waivers. The State should maximize these alternative services that have proven to produce better health outcomes, higher consumer satisfaction, more control over services, and can blatantly reduce the State's Medicaid expenditure.

**The Center for Disability Rights urges the State to avoid erasing years of policy progress in long term care.**

CDR is concerned that the State is on a dangerous course to turning back the clock on years of progress in long term care. In conjunction with the proposed cuts in the DRP, it is alarming that the Department of Health is currently working on a number of long term care reforms,

without any consideration for their connection. The uniform assessment tool, waiver reforms, regional long term care assessment center demonstrations, and the home health reimbursement methodology reform, to name a few, all impact one another yet DOH is operating as if there is no connection at all. It is time to remove the blinders and improve, not deconstruct, long term care in New York State.

The Center for Disability Rights recognizes that the State has increased outreach and collaboration with community members; valuing stakeholder participation. We look forward to strengthening this relationship with the State as it addresses the current fiscal crisis.