



**Center for Disability Rights, Inc.**  
Response to Governor Cuomo's 2017 State of the State

January 12, 2017

**OVERVIEW**

This year, Governor Cuomo delivered a series of six State of the State addresses at the following locations across the State: New York City; Buffalo; Westchester; Long Island; Albany; and Syracuse. The Center for Disability Rights notes with dismay that the Governor avoided its hometown of Rochester. In his six hours of speeches, the Governor proposed and discussed a large number of initiatives, of which several are of particular interest to the Disability Community in New York.

A preliminary note on accessibility: With six tries, the Governor was not able to make his speeches accessible to all New Yorkers with disabilities. Upon request of the Disability Community, all of the speeches were captioned, but the captioning was riddled with errors which, in some cases, destroyed the sense of what was being said. In all but the first speech, the Governor provided ASL interpreting to the audiences, but that interpreting was not provided to the majority of New Yorkers, who were not able to attend in person. In the future, ASL should be provided in a "bubble" insert in the video stream. The Governor's speech must be accessible to all New Yorkers.

**Accessibility and Investing in New York's Infrastructure**

The governor announced plans to invest heavily in infrastructure across the state. Some of the state's existing infrastructure sites demonstrate the danger of not making accessibility central to the infrastructure development. The NYC subways system is one of the least accessible transportation systems in the country with, only 17% of its stations fully accessible to disabled people. As the state develops the Woodbury Transit & Economic Hub, The Long Island Railroad, The Empire State Trail, and its many Airport renovations, accessibility must be a primary focus. In order to avoid having to retrofit accessibility features at great expense, the Governor must include people with disabilities in the planning process for all of these projects from the beginning.

**Modernizing New York's Airports**

The Governor noted that LaGuardia Airport, in particular, has been an embarrassment. We agree: accessibility at airports across the state is something we should all be embarrassed about. There is significant potential to improve accessibility for disabled travelers, and we call on the Governor to include wheelchair users, blind people, Deaf people, autistic people, and other disabled people in the planning and execution of all proposed airport modernizations. In

particular, our community experiences problems with baggage handlers and others breaking our wheelchairs, power chairs, and other adaptive or durable medical equipment when loading or unloading them from airplanes. The Modernized New York Airports can be a model of proper, accessible handling of these items, and we call on the Governor to make these things a priority in the modernization of the Airports.

As part of the Buffalo Billion phase II proposal, the Governor calls for relocating the Western New York Workforce Training Center to Northland, to make it a mixed-use neighborhood that includes light manufacturing and workforce training, as well as residential and retail locations. As with all new community development the State must take this as an opportunity to create a community that is a model of accessibility, an opportunity to create housing that is 100% visitable and has a high percentage of accessible affordable housing.

### **Ridesharing Must be Accessible to All**

The Governor's ridesharing proposal excludes the Disability Community from the anti-discrimination protection it provides to others. This exclusion is itself discrimination. Ridesharing companies have consistently discriminated against our community: without in-built protections we can be certain they will continue to. Disabled New Yorkers need more transportation options: what we don't need is more inaccessible options.

Our community's concerns about ridesharing are earned by experience. In the cities where ridesharing companies have operated, they have resisted their responsibility to provide accessible rides to disabled people. We consider the existing ridesharing companies to be actively discriminating against our community. Accordingly, ridesharing is not the future of transportation upstate: it is the same old discrimination and exclusion that our community has experienced for decades.

The Governor's call for "a task force to review, study and make recommendations regarding accessibility needs in the rideshare industry" is inadequate. Providing accessible rides to disabled people does not require further study: it requires enough accessible vehicles in the ridesharing or taxi fleet to ensure that a disabled person receives equivalent service as a nondisabled person.

Our community knows that adding accessibility after the fact is not effective. Indeed, it rarely even happens. If ridesharing companies will not provide equal access to people with disabilities on day one, what will make them provide equal access after six months, or a year, or a decade. If the State is not willing to require equal access at the time ridesharing is legalized, there is no reason to believe that it will require equal access in six months, or a year, or a decade. In promoting ridesharing, the Governor said that "innovation matters." It is 26 years since the passage of the American's with Disabilities Act, and it is time for the governor and New York to realize that "Accessibility Matters" upstate and down!

**Education: Access & Inclusivity**

The Governor proposed to make SUNY and CUNY tuition free for students of families earning less than \$125,000 per year. This proposal will fail to address fees and room and board costs which have prevented many students from working-class families from attending college. In addition, the SUNY and CUNY schools have had ongoing and significant problems with a lack of accessibility for students with disabilities. Free tuition means nothing to someone who cannot get in the door. It means nothing to someone who cannot get into the dormitories to study and socialize with their classmates. The SUNY and CUNY schools must become fully accessible to students with disabilities.

Given that disabled unemployment is more than twice that of the nondisabled population, no community is more in need of access to higher education than the Disability Community. Disabled students face numerous systemic barriers in navigating New York’s primary and secondary education systems, which prevent many members of our community from achieving academic success. Low expectations, a lack of support for IEPs, and a system that funnels disabled students onto a path that does not qualify them for the universities the governor is offering to pay for. These barriers have artificially limited the academic achievement of many disabled students at the primary and secondary school levels in ways that follow a student as they apply for colleges as well as for jobs.

College is, as the Governor has said, the key to entering the modern workforce. For our community, the lack of support in primary and secondary school will keep many disabled students from being admitted to the SUNY and CUNY schools. Without addressing these limitations, our community will never benefit from this proposal.

**Expand High Quality Pre-Kindergarten for Three and Four-Year Olds**

CDR supports the Governor’s plan to expand Pre-K services and particularly his call to ensure that there is opportunity for “a pre-kindergarten program in every high-need community in the state”. However, early childhood education for the Deaf community has been underserved so thoroughly that it requires more explicit measures. We call on the Governor to pass legislation ensuring the Kindergarten readiness of Deaf and Hard of Hearing children. It is time to invest in the Deaf Community!

**Excellence in Teaching Means Inclusive Education**

CDR approves of the Governor’s proposal to extend the Empire State Excellence in Teaching Award, because teaching is central to making education more inclusive. The Governor should take this recognition a step further by creating an award for the state’s most inclusive schools. Unless the State makes primary and secondary education more inclusive, the Governor’s promise of Higher Education will always be denied to our community.

### **Expand after-school for students in the ESPRI cities**

The Governor proposes to expand after school programs in New York’s Empire State Poverty Reduction Initiative cities. Disabled students are often excluded from after-school opportunities to learn new skills and build friendships. These opportunities play a key role in the future success of all students, and disabled students must not be excluded. The Governor must ensure that after school programs expanded through this proposal are available to all students, and that adequate supports are provided to allow students with disabilities to succeed alongside their peers.

### **Criminal Justice Reforms**

The Governor has proposed several reforms to New York’s criminal justice system. People with disabilities are often ill-served by the existing system, and CDR salutes the Governor’s intention to make criminal justice more fair to New Yorkers. In this spirit of support, CDR offers up the following specific suggestions for reforms that are vital to the Disability Community.

First: disabled people are victims of crimes, including violent crimes, at significantly higher rates than the nondisabled population, yet it is the ongoing experience of our community that prosecutors often refuse to bring charges when a victim is disabled. The causes of this refusal are likely to include the prosecutor not believing the victim, and the prosecutor anticipating that the jury is unlikely to believe the victim. Whatever the reason, the Disability Community is severely underserved by the criminal justice system. We know that the Governor, as a former prosecutor, takes the rights of victims seriously, and we urge him to call on prosecutors to find ways to establish the credibility of disabled crime victims before a jury, in order to ensure that our community’s rights and bodies are protected by the criminal justice system.

The Governor’s plan to reform the bail system is very much needed. People with disabilities are significantly more likely to live in poverty than nondisabled New Yorkers, and often cannot afford to post bail. The current bail system amounts to little more than a modern version of the old debtors’ prison. CDR looks forward to working with the Governor to change this system that unnecessarily incarcerates people for the “crime” of being poor.

### **Ensure Access to a Speedy Trial**

The Governor has proposed legislation to protect the right of defendants to a speedy trial. A lack of Specialist Certified: Legal ASL Interpreters in New York courts has prevented Deaf and Hard of Hearing defendants from receiving a speedy trial. Many Deaf and Hard of Hearing defendants report their hearings and trials delayed multiple times due to a lack of such interpreters. This is an area in need of reform and we urge the Governor to include the need for Specialist Certified: Legal ASL Interpreters in his reforms.

### **Raise the Age of Criminal Responsibility**

CDR strongly supports the Governor’s proposal to raise the age of criminal responsibility. This proposal will significantly benefit young disabled people, who are much more likely to interact with the criminal justice system than the nondisabled population. Nationally, as much as 85 percent of youth in juvenile detention facilities have disabilities that make them eligible for special education services. Raising the Age of criminal responsibility is an important advance toward ensuring that young disabled people avoid the school-to-prison pipeline.

### **Record Police Interrogations for Serious Offenses**

CDR supports the Governor’s proposal to video record the interrogations of defendants accused of serious crimes. The interrogation of a defendant is a critical part of criminal prosecution, but in many cases, police do not have the cultural competence to ensure that the rights of disabled defendants are protected. This includes the lack of access to ASL interpreting for Deaf and Hard of Hearing defendants, a lack of reasonable accommodations for people with intellectual and developmental disabilities, as well as for people with Traumatic Brain Injuries or mental health disabilities for whom the stress of interrogation can cause the defendant rapidly to decompensate. The Governor should call for police to receive training and oversight to ensure that the rights of all disabled defendants are protected during interrogation.

### **Extend the *Hurrell-Harring* Settlement Reforms**

The Governor has proposed legislation to extend the agreement in *Hurrell-Harring* to the entire State. That agreement requires courts to provide defense counsel to indigent defendants. CDR supports this proposal, because disabled people are both significantly more likely to live in poverty and to interact with the criminal justice system. We urge the Governor to include a requirement that the courts provide qualified ASL interpreters for Deaf and Hard of Hearing defendants’ in every interaction with their court-appointed attorneys.

### **Disabled & Aging in Prison**

CDR supports the Governor’s plan to provide supports for people leaving State Prisons. People with Disabilities are disproportionately represented in State Prisons and many struggle to avoid re-incarceration because of a lack of community-based services. This proposal must include supports for people with disabilities including those with mental health disabilities.

The Governor’s plans for the incarcerated population are not good enough. Fifty beds for older prisoners in one correctional facility is inadequate in a prison network that systematically denies disabled prisoners rights guaranteed by the ADA. The Governor must bring State Prisons into ADA compliance. This includes the provision of video phones for Deaf & Hard of Hearing Prisoners, access to wheelchairs and other adaptive devices, and adequate mental health services.

He must also end the use of solitary confinement, an outdated and solely punitive measure that triggers and causes mental health disability.

### **Sentencing Reform**

CDR applauds the governor's proposal to reform sentencing laws and find alternatives to mandatory sentences for minor offences. Roughly 1 in 5 incarcerated people have mental health disabilities. The State must provide community based solutions that serve both society and the individual. The prison system as it is currently constructed is the worst possible place to be the State's largest mental health provider.

### **Combating Opioid and Heroin Epidemic**

While CDR applauds Governor Cuomo's plans to make treatment options more available to substance abusers, the Governor must not ignore one important issue in his focus on opioid abuse: the genuine pain management needs of disabled New Yorkers. The State must make pain management solutions available to those who need them while ensuring that they are not treated as criminals for trying to deal with their pain.

It is vital that the State develop more options for pain management and palliative care. Too often people are forced to choose between dependency on highly problematic medications and enduring excruciating pain. New York must lead the way in addressing this challenging issue. The State must be proactive in developing new and innovative pain management strategies.

The Governor has also proposed an ambitious plan to protect New Yorkers from soaring prescription drug prices. Access to prescription drugs is vital for disabled people, who not only require prescription medication at higher rates than nondisabled people, we also experience poverty at higher rates than the general population. The Governor has rightly made access to prescription medication a priority in the State of the State speech, and we urge him to include access to pain management as a priority as well, for those who need it.

### **Closing The Wage Gap For EVERYONE**

The Governor now requires State employers and State contractors to ensure that they are not discriminating against women and ethnic minorities in payment of wages. The Governor is right that New Yorkers deserve to make a living wage, and that the State as an employer, and as a contractor for services, must not perpetuate discrimination against oppressed people in the form of a wage gap. Closing the wage gap is a noble aim, but the Governor has excluded others who experience an even more significant wage gap than women and ethnic minorities: people with disabilities.

### **Subminimum Wages are Discrimination**

Last year, Governor Cuomo traveled the state to promote a living wage for New York's minimum wage workers, and signed legislation raising the minimum wage to \$15/hour over the next several years. That legislation left out workers with disabilities in two ways. First, the State continues to allow the use of Federal subminimum wage certificates to pay people with disabilities less than the minimum wage, in some cases as low as \$0.85 per hour. The State should ban the payment of subminimum wages this year. At a bare minimum, the State should refuse to contract with organizations which pay people with disabilities less than the minimum wage.

### **Fund a Wage Premium for CDPAS Workers**

Second, the Governor has created a wage gap by the manner in which the minimum wage was implemented. Workers who provide, for instance, Consumer Directed Personal Attendant Services (CDPAS) have had to struggle to be paid the minimum wage for their work. This is a sharp contrast to the premium above minimum wage which CDPAS workers received in 2008. At present, a worker will make more per hour in fast food than they will assisting people with disabilities with tracheotomy care, g-tube feedings, catheter care, and other services which otherwise require skilled nursing. This has meant that people with disabilities have significant difficulty recruiting and retaining workers. In turn, this means that people with disabilities who could live in the community with the support of such workers, are instead forced into institutions at significantly higher cost to the State.

CDR calls for increased funding and a wage premium for CDPAS workers, and we call on the Governor to end this discrimination against disabled people that occurs every day right here in New York, at the hands of State contractors and facilitated by State Agencies.

### **Access to Voting**

The Governor has proposed allowing early voting in all districts, and same-day registration. Early voting, in particular, will be a great benefit to disabled voters, and CDR supports both early voting and same-day registration. The details of the Governor's proposal, however, suggest that accessibility of the early voting site will be balanced against convenience to nondisabled voters. Access to the vote is a fundamental right which is denied to disabled people when polling locations, voting machines, or the voting process are inaccessible. We urge the Governor to clarify in no uncertain terms that all early voting sites must be accessible to disabled New Yorkers.

In addition, we foresee in same-day registration a potential hazard which may result in the disenfranchisement of some voters. Local boards of elections should be required to publish clear instructions as to the requirements for same-day registration, in order to ensure that unregistered

voters understand those requirements before they show up at the polls. These instructions should be written in a way that is accessible to people with intellectual and/or developmental disabilities, and published in alternative formats such as large print, braille, and accessible electronic formats in order to ensure that disabled voters do not show up unprepared to register, and be denied their opportunity to vote.

### **Access Child Care is Needed along with a Tax Credit**

The Governor has proposed a Child Care Tax Credit to assist parents with child care costs. Disabled parents, and parents of disabled children, experience significant barriers to accessing child care due to lax enforcement of the ADA. This tax credit should be accompanied by significant ADA enforcement measures to ensure that disabled parents and parents of disabled children are able to use the child care services for which this tax credit provides relief.

### **Protect Seniors and Disabled People from Financial Exploitation and Foreclosure**

CDR lauds Governor Cuomo's proposal to protect seniors from financial exploitation and foreclosure, but notes that many seniors who are at risk of such exploitation have disabilities. Accordingly, launching an elder abuse education program will best meet the diverse needs of the aging population by explicitly including disability and disability competence.

CDR supports Governor Cuomo's proposal to identify and close consumer protection loopholes, especially where existing policies have a disparate impact upon older adults and disabled people. No one who has a disability impacting memory or other relative cognitive function should be at risk of losing their home because of that disability. We support the thorough review of all reverse mortgage regulations and practices in order to ensure that older and disabled New Yorkers are not exploited.

The Governor proposes a grant of authority for banks to place holds on potentially fraudulent activity and reporting suspected financial exploitation. CDR strongly cautions that banks and other reporting agencies must not place such holds solely on the basis of age or disability, as these acts are discriminatory. Financial institutions must ensure that the protections they put into place do not reduce the decision-making agency of disabled or aging customers. In implementation, this proposal should not form a barrier to using banks and other financial services.

### **Include Disability in Interfaith Task Force on Hate Crimes**

The Governor's Interfaith Task Force on Hate Crimes has never been needed more than it is today. The Governor must ensure that disability hate crime is part of the task force's remit and that people with disabilities are a part of its composition. The Disability Community intersects with every other section of our society, and we experience hate crimes and violence at higher

rates than nondisabled members of our communities. The Task Force will not be able to “promote open-mindedness and inclusivity, and bolster the state’s efforts to protect all New Yorkers” if it does not include disability and the Disability Community.

**Provide Real Choice in Community Health and Wellness in Brooklyn**

The Governor proposes a significant investment in community-based health care in Brooklyn, in order to address social determinants of health such as food insecurity and access to primary and ambulatory care. CDR strongly supports increasing access to community-based health services and applauds this proposal, with the single caveat that funding for supportive housing should be expanded to include integrated, affordable, accessible housing that is not operated by a health care provider. This will maximize the choice of consumers who require such housing, and to increase the potential drawdown of Federal funding through Community First Choice.

**Protect People with Disabilities In Property Tax Referenda**

Governor Cuomo has proposed that the budgets of local governments be approved by direct referenda. The Disability Community is alarmed by this proposal. Direct referenda on spending for services will always subordinate the services which our community requires in favor of the interests of a majority which often discriminates against our community. On issues from: ensuring physical access, to local services, to sidewalk snow removal, to ASL interpreters at local events, the integration and equal treatment of our community cannot be left to majority vote.

**ABOUT THE CENTER FOR DISABILITY RIGHTS**

The Center for Disability Rights is a disability led, not-for-profit organization headquartered in Rochester, New York, with offices and program sites in Albany, Canandaigua, Corning, and Geneva. CDR advocates for the full integration, independence, and civil rights of people with disabilities. CDR provides services to disabled people 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.

Each year, CDR closely reviews and responds to the State of the State and the Executive’s proposed budget. CDR’s response focuses on how the State of the State’s proposals will affect the ability of people with disabilities to live independently in the community.