



# Center for Disability Rights, Inc.

## Governor Silently Declares War On Disabled New Yorkers

Response to Governor Cuomo's 2019-2020 State of the State and Budget

January 22, 2019

### INTRODUCTION

*Each year, the Center for Disability Rights (CDR) analyzes the Governor's State of the State Agenda and Budget to identify the effect of these proposals on the Disability Community in New York.*

When Governor Cuomo released his 2019 legislative agenda during his First 100 Days speech in December, he declared that 2019 would be the time for “true justice.” He shared a progressive legislative plan, promising to focus on marginalized populations while creating a more prosperous and sustainable state. He claimed his plans were solutions of which President Franklin Delano Roosevelt (FDR) would be proud. In fact, Cuomo mentioned FDR’s name no less than 30 times and quoted him five times in his less than one-hour speech. However, at no point in Cuomo’s “progressive” scheme did Cuomo address the one marginalized population that FDR was famously a member of: the Disability Community.

The truth is that FDR was like any other disabled person; he needed attendant services, accessible housing, and reasonable accommodations. Despite this, not only did the Governor ignore the Disability Community in his First 100 Days agenda, the Governor also saw the Disability Community as unworthy of mention in his State of the State and Budget address; he erased us just as he erased FDR’s disability.

It is no longer surprising, but nevertheless disheartening, that while Governor Cuomo pursues “ever upward” goals for New York, he shapes a future for disabled New Yorkers that trends ever downward. Cuomo casts himself as the bringer of justice and the great successor of FDR while effectively forcing disabled people into institutions or their graves. He preaches the need for livable wages and affordable housing, but stifles disabled New Yorker’s opportunities for employment, housing, and the services which would ensure a prosperous life.

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Governor Cuomo claims to defend all of us from the “assault” on our liberties from the federal government, but he is the one who is succeeding at taking away the freedom that President Trump failed to take from us when he attacked Medicaid and the Affordable Care Act. Governor Cuomo has one tool that President Trump did not; where the President was seeking to impose spending caps, the Governor already has one in place – the Global Cap. Governor Cuomo uses his Global Cap to justify bludgeoning any program he does not wish to address, even if it is a program that keeps disabled New Yorker’s alive and in the community, such as the Consumer Directed Personal Assistance Program (CDPA) that Governor Cuomo is proposing to devastate. The Governor ignores his Global Cap when it is convenient, finding 4.3 billion dollars to entice one of the wealthiest corporations in the world to come to New York. However, the Governor’s global cap then comes roaring back to life when he needs to justify limiting disabled people’s access to the services we need to live in the community. He does all of this while finding extra funds to increase the wages of the union workers in the hospitals and institutions used to lock disabled people away from their homes and communities. The Global Cap is a far too convenient and inconsistently applied excuse, and these budget policies amount to a far more dangerous assault on our liberties than anything proposed by President Trump.

## **EXECUTIVE SUMMARY**

Last year, in the midst of his primary campaign for re-election, the Governor’s office reached out to CDR and several others in the Disability Community for support a new disability initiative. The Governor’s office assured us that this was part of a multi-phase initiative that would eventually ensure the Disability Community’s involvement in the budget process. As part of these discussions, CDR submitted our budget requests for the Disability Community.

CDR’s budget requests were modest, but the Governor ignored them all. Instead, he issued a number of proposals that will drive people into institutions or kill us, such as his proposal to restrict the number of fiscal intermediaries in CDPA. In other places, he simply erased us from the State’s agenda, offering the State’s protection to other marginalized groups while ignoring that the Disability Community faces many of the same threats, and often at the State’s hands. These proposals add up to the very kind of assault the Governor claims to be protecting us from. Governor Cuomo closed his budget address professing the love that the State has for a laundry list of marginalized groups, and once again he erased the Disability Community. We call on Governor Cuomo to extend that love to the Disability Community and work with us to offer real justice to Disabled New Yorkers.

## **ANALYSIS OF PRIORITIES THE GOVERNOR FAILED TO INCLUDE IN HIS BUDGET**

In August of 2018, the Center for Disability Rights created an agenda of previously recommended, yet unimplemented policy priorities, which we communicated to the Governor in advance of the budget making process.<sup>1</sup> The Disability Community has advocated for these priorities for at least three years, and we urged the Governor to include them in his 2020 Budget. We include here the policy proposals which are important to the Disability Community but which the Governor has neglected.

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<sup>1</sup> Center for Disability Rights’ Community Living Budget Priorities, available at <http://cdrnys.org/blog/press-releases/center-for-disability-rights-community-living-budget-priorities/>

### ***Reestablish the Office of the Advocate for People with Disabilities***

The needs of New Yorkers with disabilities have been ignored for far too long, and in some cases, the Governor has silenced our voices. In 1983 Governor Mario Cuomo established the Office of the Advocate for Persons with Disabilities as an office within State government to represent the Disability Community. While this office technically still exists, it has never been staffed and funded during the Governor Andrew Cuomo's time in office, despite repeated requests from the Disability Community.

Failing to staff and fund the Office of the Advocate means that there is no State Office or Agency with the mission of securing the independence and integration of disabled people into the community. The Disability Community supports the reestablishment of the Office of the Advocate to work to ensure that the rights of people with disabilities to live in the community and lead an independent life. With a functioning Office of the Advocate, the Disability Community could work within state government to find ways to limit spending without risking CDPA, ensure attendant wages are appropriate to ensure an adequate workforce, to maximize funding for community living through the Community First Choice (CFC) Option, to ensure there is enough accessible housing to meet the needs of disabled New Yorkers, and so much more. Governor Cuomo should work with the Assembly and Senate to reestablish this office with enthusiasm so that Disabled New Yorkers have our rights protected and our interests fully represented in state government. This will go a long way to ensure that Governor Cuomo's Justice Agenda truly does bring justice for all.

### ***Address the Attendant Workforce Shortage in Consumer Directed Services***

We are now nearly a decade into an attendant workforce crisis. People in the Consumer Directed Personal Assistance Program who require attendants to assist with their activities of daily living struggle to both find and retain workers and pay them a competitive wage under Medicaid managed long term care (MLTC). It is a crisis that has largely been created by the State, and as we discuss later in our analysis of the Governor's proposal to limit fiscal intermediaries, is just a small sign of this Governor's hostility toward the only program in the State that was created by disabled people for disabled people. The current capitation does not allow us to pay our attendants a wage adequate to attract a sufficient workforce. We are now seeing disabled people forced into institutions because they cannot recruit enough staff to support their lives in the community. There is a long history of evidence showing that when we are able to pay our attendants at a level above the minimum wage, we can attract an adequate supply of attendants to help us stay in our own homes in the community. This results in reduced medical and institutional spending. However, the State has created the current workforce crisis by allowing attendant pay to stagnate as it raised the minimum wage. The Governor must act now to address this crisis or more people will be forced into nursing facilities. Fortunately the Governor's budget may offer a solution: revenues from marijuana sales.

CDR has no position for or against the Governor's call to legalize the recreational use of marijuana. If, however, the State does implement the policy, the revenues generated by marijuana sales present the perfect solution to the attendant workforce crisis. The revenue windfall the State would see from

marijuana sales has been estimated to be between \$110.3 and \$428.1 million per year.<sup>2</sup> This would allow us to not only pay a living wage to our attendants but also attract attendants to do the work that enables us to live in our communities.

The Governor also failed to address the State's continued disregard for its commitments under the CFC. When the New York agreed to take the enhanced FMAP as part of CFC, the State committed to not discriminating by disability type. Unfortunately, the State continues to provide different reimbursement rates on the basis of type of disability. The Governor can comply with CFC and stop discrimination on the basis of disability by setting the rate for CDPA attendants and other home care workers at the same rate as providers under OPWDD.

#### ***Assure Access to Home and Community Based Services for Disabled and Elderly New Yorkers***

Once again the Governor's budget has failed to include anything to address long standing issues with how the State supports disabled people who are most at risk of institutionalization. Both the Disability Community and MLTC plans have long questioned the adequacy of New York's capitation model for funding long term supports and services. The model is designed to be actuarially sound across the plans – however, this system ignores the fact that individuals' support needs are not distributed evenly across the plans. While some plans may have only a handful of significantly disabled people who require more services and supports, other plans have dozens. In recent years this has led to the closure of several of the plans that served a greater number of people with significant service and support needs.

Additionally, it creates a disincentive for MLTCs to serve people with significant disabilities in the community and it incentivizes institutionalization.

For several years we have called on the State to implement a high needs community rate cell to ensure that all disabled people can be supported in the community and to disincentivize MLTC plans from pushing individuals with higher support needs into institutional placements. In 2018, the Department of Health (DoH) went to the Centers for Medicare & Medicaid Services (CMS) with a request to create a rate cell determined by the cost of supporting an individual in the community instead of one that is based on the factors which result in a higher cost. CMS rejected the State's proposal. At best this was a poorly executed attempt by DoH to get the rate cell that disabled New Yorkers so desperately need. However, to the Disability Community, which has been met with regular resistance from the State and this Governor in our fight to live in the community, the attempt at securing the rate cell seemed disingenuous. Of course CMS would deny authorization to a rate cell based on cost because managed care organizations could shift people into a higher paid rate cell. However, a rate cell based on acuity, built around the actual support needs of the individuals – not on cost – would be a proposal that could make it through CMS and give disabled New Yorkers a real chance to live in the community. The Governor must institute an acuity based community rate cell to protect the freedom of disabled New Yorkers.

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<sup>2</sup> New York State Department of Health. (2018). Assessment of the potential impact of regulated marijuana in New York State, available at [https://www.health.ny.gov/regulations/regulated\\_marijuana/docs/marijuana\\_legalization\\_impact\\_assessment.pdf](https://www.health.ny.gov/regulations/regulated_marijuana/docs/marijuana_legalization_impact_assessment.pdf)

### ***Bring Home Disabled New Yorkers Forced into Exile***

New York exiles more than 600 Medicaid enrollees to institutions in other states. Being forced into a nursing facility or other institution is already a terrible fate for disabled New Yorkers who want to live in freedom, but the State only exacerbates this by separating disabled people hundreds of miles from friends and loved ones. This policy exacerbates the isolation already inherent in institutional placements and is unacceptable. The State must repatriate all of its residents and provide them with community-based supports and services in New York.

### ***Increase Funding for Independent Living Centers***

Independent living centers (ILCs), which are disability-led not for profit organizations, are the leading organizations helping disabled and elderly New Yorkers to live in the community instead of going into costly and restrictive institutional settings. Every year, ILCs throughout New York State help thousands of seniors and disabled people transition out of institutions and into the community, which ultimately saves the State money and leverages the State more federal dollars through CFC.

Furthermore, ILCs help disabled and elderly people apply for benefits, find jobs, identify accessible housing, access medical equipment, and so much more. ILCs continue, year after year, to serve more people but ILC funding levels have been stagnant. The Governor's Budget does nothing to address ILC funding. By failing to increase ILC funding, the Governor is actively limiting the ability of ILCs to serve all of the disabled and elderly New Yorkers that want and deserve to stay in their communities.

CDR calls on the Governor to increase base funding for ILCs in SFY 2019-20 to \$18 million with the long term goal of increasing the State appropriation to \$25 million. CDR recommends that all funding increases be applied evenly across ILCs.

### ***Support and Fund LEAD-K for Deaf Children in New York***

CDR asked the Governor to address Deaf kindergarten readiness by including LEAD-K legislation as part of his budget. The Deaf Community has spent too long left out of the Governor's Education plans. Currently, Deaf children are entering school behind their non-Deaf peers and this gap is only growing within the school system. Everyone in both the Deaf Community and the education system agree this problem is tied to language acquisition, but we have no data to help us understand where to steer early intervention. Until the New York begins to examine this issue we can count on the State to continue to fail Deaf students.

LEAD-K is part of a national movement. It starts with an assessment of language acquisition in Deaf kids 0-5, that data is then fed into a committee which advises the State on how to best support Deaf students. It costs little to implement and will offer the State a path forward that does not leave Deaf students behind. Right now, Deaf students are leaving school on average with a third or fourth grade reading level. They are not passing the State's Regents exam and, therefore, have no access to State programs like the Excelsior Scholarship. All of these factors contribute to an adult Deaf Community in which only 38.3% have full time employment in New York State.<sup>3</sup> Governor Cuomo has admirably

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<sup>3</sup> Disability Statistics. Search results under the category: Disability Type = Hearing Disability. <http://www.disabilitystatistics.org/reports/acs.cfm?statistic=4> . Last accessed January 21, 2019.

spent much of his time in office looking at improving kindergarten readiness; not including LEAD-K is part of a worrying trend in which time and again the Disability Community is left out of his grand plans. LEAD-K must be included in the Governor's budget amendments.

### ***End Subminimum Wages for New Yorkers with Disabilities***

Antiquated federal law technically allows organizations holding Department of Labor 14(c) certificates to pay workers with disabilities pennies per hour, but the dignity of disabled people must take precedence over this archaic legal technicality. New York and Governor Cuomo must make it a priority to end the discriminatory practice of paying disabled people a subminimum wage. In 2018, the Governor directed the State's Department of Labor to hold hearings on sub-minimum wage, but the hearings only addressed tipped wage workers, completely ignoring ongoing harm to disabled New Yorkers. Not only was the Disability Community left out of the sub-minimum wage hearings, we were also left out of the "Fight for Fifteen" campaign which resulted in the minimum wage for nondisabled people being raised to \$15/hour while allowing subminimum wage for disabled workers to continue.

If Governor Cuomo truly wants to improve the employment of people with disabilities, he must refer to the examples provided by Vermont, New Hampshire, Maryland, Alaska, and the City of Seattle, WA. Through legislation or regulation, each of these jurisdictions has ended the outdated employment model supplied by subminimum wage. The State must send a clear message to all Section 14(c) certificate-holding organizations that it is time for all New Yorkers to receive a fair, living wage for the work they perform. New York State must resolve not to support or award State contracts to 14(c) certificate holders. With a commitment to supporting the rights and dignity of disabled New Yorkers, our State can become a more diverse and equitable place to live and work.

### ***Increase Affordable, Accessible, Integrated Housing Options***

There is a crisis-level shortage of affordable, accessible, integrated housing throughout New York State. Without affordable, accessible, and integrated housing, disabled and elderly New Yorkers cannot live in their own homes and be integrated in mainstream society. We called on the Governor to increase the amount of affordable, accessible, integrated housing throughout New York State, and to recognize that New Yorkers who have been stuck in nursing facilities for more than 90 days with nowhere else to go are, indeed, homeless and should be given priority in public housing to support their transition back into the community. Furthermore, we urged the Governor to fund Access to Home at \$10 million to ensure that disabled people who have their own homes can make modifications to their homes and stay in their communities. Lastly, we urged the Governor to create visitability tax credit. The Governor failed to include any of these initiatives in his budget.

### ***Create a Visitability Tax Credit***

While Governor Cuomo's plans include the tax system and many different tax credits, he has – for the fourth year in a row – failed to address the need for a Visitability Tax Credit in New York State. The Governor spoke of the need to maintain New York's progressive tax system, citing efforts to maintain the 2% cap on regressive local property taxes, the millionaire's tax credit, and efforts to cut middle class taxes while fighting to repeal the cap on state and local tax (SALT) deductions at the federal level. While this is laudable, it has also called some of the Governor's recent veto messages into question. In

vetoing the Visitability Tax Credit the Governor claimed that it was incompatible with the tax code, yet the Governor's budget includes many tax proposals, all of which are more complicated than a tax credit for people to make their homes more accessible. The proposed bill was capped at one million dollars and would enable home-owners to retro-fit their homes to make them more accessible. It would allow people to build ramps, add accessible bathrooms, and wider doorways. In addition to increasing the accessible housing stock, it would allow older New Yorkers to age in place, and would mean New Yorkers with disabilities could visit friends and family in their homes and be more involved in our communities. If the Governor is truly intent on developing a progressive tax system he must include visitability in his budget amendments and either construct it in ways that fits the tax system or change the tax system to accommodate it.

## **ANALYSIS OF PRIORITIES INCLUDED IN THE GOVERNOR'S BUDGET**

### **Health and Long Term Services and Supports**

#### ***Fiscal Intermediary Limitation & Administrative Restructuring Puts Disabled Lives in Jeopardy***

Governor Cuomo declared war on disabled New Yorkers in his 2020 budget by attacking the very program most responsible for supporting us in the community: the Consumer Directed Personal Assistance Program (CDPA). If the proposals the Governor made in his budget come to pass tens of thousands of disabled New Yorkers will either be forced into nursing facilities or die without the supports and services we need to live our lives.

CDPA is the only program serving the Disability Community that was designed by and for our community – and right here in New York. It is the program that gives us the most control over our lives. It allows us to choose who enters our homes, who helps us with our most intimate tasks, who touches our bodies, all on a schedule that works for us, not an agency. CDPA makes disabled people the employers with the right to hire and fire our attendants and exert control over the services and supports we receive. This level of control is made possible by the assistance of a group of organizations known as fiscal intermediaries (FIs). FIs provide disabled people with assistance in managing our services. This assistance can range from payroll processing, recruitment assistance, training, advice, and other supports for consumer-supervisors. These services are often the difference between an individual thriving in the community and being forced into an institution.

The Governor proposes awarding a no-bid contract for a statewide FI. He would further limit the organizations operating as FIs to either Independent Living Centers or organizations that have been contracted to county departments of social services since 2012 and operate in accordance with any criteria DoH may develop. We know though that the ultimate goal is one FI for all of New York, eliminating over 600 businesses and forcing disabled New Yorkers to operate under a monopoly.

In reading the Governor's proposals, we are concerned that that DoH has no idea what FIs are or what they do. The proposal operates under the mistaken belief that FIs are all simply payroll processing operations. This could not be further from the truth. The Governor ignores that FIs offer a range of services to disabled consumer-supervisors that fit their needs. The Governor paints a picture of FIs

where any FI can replace any other FI. His proposal will drive many disabled people out of the community and into nursing facilities.

This is not to say that all FIs are faultless; there are bad actors among the FIs operating in New York. These bad actors are referred to by many as “homecare light” – homecare agencies operating as FIs without changing their operations to fit the FI model. Some FIs are even being used managed care organizations to bypass their marketing ban. It is for these reasons we worked with DoH, the Legislature, and the unions to pass FI authorization two years ago. FI authorization is an ongoing process with the first batch of authorizations just starting to trickle out now. If the Governor finds that authorization is not weeding out the bad actors then he already has the authority to make authorization more stringent. Governor Cuomo’s current proposal is the equivalent of moving from one fix to another before the first has even had a chance to work. His solution amounts to performing surgery with a sledgehammer rather than a scalpel. There are poor services that will be left operating and good services that will be snuffed out under the Governor’s proposal. Ultimately, everyone will lose as disabled New Yorkers are forced into a monopoly, meaning if they can get services, they will be delivered with the same degree of respect and efficiency one expects from their cable company. No matter what, in every situation, a few corporate interests win and disabled New Yorkers will lose.

More damaging still is the Governor’s proposal to pay FIs a monthly per person administrative fee. This will create a system where FIs are nothing more than payroll processors. It will force FIs to pull vital services that are the difference between some people being able to stay in the community and being forced into nursing facilities. For example, some people with significant disabilities have very intense support needs. The danger of this proposal is that it presumes that an FI performs the same volume and level of service for the person receiving 6 hours of services as they do for a person receiving 168 hours of services. Even if FIs were solely focused on processing payroll, this would be a ridiculous assumption.

If the Governor’s proposal goes through, New York will end up with a Medicaid mill serving as an FI, only interested in serving the consumers that they can process quickly, and providing the bare minimum of service. As a result, New York will have tens of thousands of significantly disabled people forced into institutions because they can no longer get the supports they need to manage their own lives in the community.

If the Governor is truly interested in cutting costs and honoring his Olmstead Plan’s commitment to support disabled New Yorkers to live in the community, a much better way forward would be to limit the number of MLTC plans. There are currently 57 different MLTC plans and there are far greater savings to be found in reducing this number than there are in the modest gains to be found in limiting FIs. In addition to the savings, a reduction in MLTCs would have a number of other benefits. For example, fewer plans serving more people would spread risk more evenly across plans positioning each remaining plan to better serve disabled people with higher support needs in the community. This will also mean that the plans operating in the State will be more financially stable.

While Governor Cuomo likes to portray himself as the anti-Trump, the Disability Community sees them as one in the same. In 2017 President Trump tried to save money by cutting services disabled Americans use to live in the community. The President failed because the Disability Community fought back. Now, the Governor is making the same threats to disabled people. Governor Cuomo can either continue down the same path as President Trump or he can find a solution that works for all New Yorkers.

#### ***ACA Protections Do Nothing for the Disabled People Who Saved the ACA and Medicaid***

Many of us at CDR were heavily involved in the fight to save the Affordable Care Act (ACA) and Medicaid. We were literally dragged out of Congressional Offices in handcuffs numerous times to fight off repeal attempts and Medicaid cuts. We helped write the Community First Choice Option of the ACA, a policy which has brought millions of dollars to New York, despite the State consistently delaying CFC's implementation. While we are glad to hear Governor Cuomo's call for the ACA to be codified in State Law to shield it from "assaults" from the federal government, we are disappointed that the Governor gives no regard to disabled people with long term service and support needs in his plan.

The disabled Americans – and indeed New Yorkers – who put our bodies on the line to fight the Republican assault on Medicaid and the ACA did so to prevent caps and cuts to the services that allow us to live in freedom in the community. Not only did Governor Cuomo do nothing to help us fight the ceaseless attacks on Medicaid, but based on his budget proposals, he is a firm believer in capping and cutting Medicaid services. The most significant difference between Governor Cuomo and the Trump Republicans is that the Governor has been much more successful at destroying the services we need to live in the community. When the Governor presents a budget that actually promotes community integration, he will begin moving in the right direction.

#### ***Universal Health Care Proposals Must Include LTSS***

Governor Cuomo has proposed creating a Commission to develop options for universal health care. Governor Cuomo is ignoring the extensive work that has already been done on this subject by the Health Chairs of both the Assembly and Senate who have crafted a bill that will include long term services and supports (LTSS) as part of the benefit. The Governor must introduce a real universal health care program that ensures that disabled New Yorkers have the services and supports we need to transition into and remain in the community.

#### ***Narrowing Spousal Refusal Denies Disabled New Yorkers the Right to Marry***

CDR is vehemently opposed to the proposal to force spouses of otherwise Medicaid-eligible individuals to impoverish themselves or deprive disabled individuals who need Medicaid of marriage equality. Disabled people, like everyone else, deserve the choice to marry the people whom they love; the Governor is a staunch supporter of marriage equality, but not when it comes to policies that affect the ability of disabled people to receive the services and supports we need. While federal law permits spousal refusal – the ability of a person to agree not to use their own resources to support their spouse with the understanding this allows the spouse to receive services and supports through Medicaid – the Governor continues to ask that spousal refusal be eliminated in New York. The sad result of his proposal is that married disabled people must choose to either live apart from their spouses or allow their spouse to impoverish themselves; meanwhile, unmarried disabled people who rely on Medicaid could not marry

without risking their services and supports. Either way, the rights of disabled people to marry and establish a family is infringed upon. Governor Cuomo should not sacrifice freedoms and rights in the name of fiscal efficiencies. He must stop proposing to break up disabled people's families.

## **Infrastructure**

### ***Capital Improvements to MTA Must Improve Accessibility***

Governor Cuomo proposes to reorganize the MTA and provide additional funding using congestion pricing to maintain and update the deteriorating subway system. The Disability Community appreciates the attention to this vital transportation network while urging that system updates incorporate large scale accessibility improvements.

The MTA may have been the victim of neglect and “diffused responsibility,” as Cuomo says in his 2019 Justice Agenda, but the truth is the New York City subway has never met the needs of physically disabled New Yorkers. Now, not only is the MTA struggling to perform maintenance on existing infrastructure, but only 24% – not even a quarter – of MTA subway stations are accessible.<sup>4</sup> Physically disabled people are under severe strain by not being able to be fully productive or integrated into their communities because of the veritable transit deserts in New York City where accessible subway stations are nonexistent.<sup>5</sup> While track and signal repairs funded by Governor Cuomo’s Subway Action Plan improve overall system operability, continuing lack of accessible stations and inadequate response to frequent elevator outages and maintenance needs, mean disabled people lack transportation, a significant barrier to employment and involvement in community life.

### ***MTA Capital Improvement Funding Sources Must Not Penalize Disabled People***

The *Fast Forward* plan proposed by the new leadership at New York City Transit includes promising and ambitious measures to upgrade subway accessibility throughout the system at a faster rate.<sup>6</sup> However, as the City Comptroller’s office points out, the success of the plan is dependent on significant external funding.<sup>7</sup> While congestion pricing (charging higher rates during peak times) may be an acceptable source of revenue, the Governor must call upon the City of New York to ensure that its policies are updated so as not to discriminate against disabled people who rely on private vehicles for transportation. The New York City parking permit for disabled people must exempt holders from congestion pricing should it be enacted. The New York City Council correctly exempted for-hire wheelchair accessible vehicles from a ride surcharge enacted earlier this year; the Governor must call on New York City to do similarly in the case of congestion pricing.

Governor Cuomo must also respond to reporting by the *New York Times* that congestion pricing alone will not cover the necessary costs demanded by the *Fast Forward* plan. According to the *New York Times*, congestion pricing could cover \$12 to \$25 billion of the \$40 billion called for spending in the

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<sup>4</sup> Service Denied: Accessibility and the New York City Subway System, July 17, 2018, available at <https://comptroller.nyc.gov/reports/service-denied-accessibility-and-the-new-york-city-subway-system/>

<sup>5</sup> Id.

<sup>6</sup> Fast Forward: The Plan to Modernize New York City Transit, available at <https://fastforward.mta.info/>

<sup>7</sup> Service Denied: Accessibility and the New York City Subway System, July 17, 2018, available at <https://comptroller.nyc.gov/reports/service-denied-accessibility-and-the-new-york-city-subway-system/>

*Fast Forward* plan.<sup>8</sup> The Governor must consider other ideas in order to ensure adequate funding to make the MTA subway meets the needs of disabled New Yorkers and tourists. Of the various other funding proposals, the Disability Community has made it clear that the MTA should not look to increased fares, which would place the costs of improvement on those who can least afford it, especially people with disabilities who could be made to pay more than base subway fare for unequal paratransit service. Other MTA funding options must be used. At the same time, we must acknowledge the current and future limitations of the accessibility of the MTA subway and continue to work to improve the Access-a-Ride experience for individuals who cannot use the fixed route service.

### ***Accessible Infrastructure Supports Community Integration and Tourism***

Governor Cuomo wants to invest an additional \$150 billion in our infrastructure. We applaud the interest in updating our State's infrastructure and the intention to fuel economic growth. At the same time, we caution that infrastructure projects must incorporate accessibility for disabled people from the beginning. A commitment to accessibility in places like new airports and rail stations will not only ensure the right of disabled people to access those resources, but solidify New York as a welcoming tourist destination for all and further fuel our economic growth.

## **Housing**

### ***Protection Against Source of Income Discrimination Will Help Disabled New Yorkers***

CDR appreciates the Governor's acknowledgement of the crisis in access to affordable housing in his budget address. The crisis is especially dire among disabled people, who are much more likely to live in poverty than nondisabled people and, therefore, rely on housing subsidies and other programs to pay for housing. CDR applauds the Governor for addressing the blatant discrimination against people using such programs by including a prohibition on source of income discrimination in his budget.<sup>9</sup> Without such legal protection, landlords would continue to deny housing to disabled people on the basis that they use programs like the Section 8 Housing Choice Voucher, or the Olmstead Housing Subsidy, which allow disabled people live in the community rather than nursing facilities. The Governor has taken an important step to help disabled people obtain accessible and affordable housing.

### ***Existing Housing Stock Must Be Made More Accessible so People Can Stay in their Homes***

The Governor's proposed anti-discrimination measures alone will not address the lack of accessible, affordable, integrated housing available to disabled New Yorkers. Disabled people are typically able to find housing that is either accessible or affordable, but rarely both. The solution is to increase the accessible housing stock. As previously discussed, one way to increase the accessible housing stock is to make it easier for homeowners to pay for making their homes more accessible through a visitability tax credit. Another way is to restore funding for the Access to Home in order to assist individuals who simply do not have the resources to pay for the retrofits themselves. While the Access to Home program remains underfunded, the Access to Home for Heroes program which specifically benefits disabled veterans is funded significantly higher than the Access to Home program, but those funds are underused.

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<sup>8</sup> Can Charging Drivers Really Solve the Subway Crisis?, Oct. 12, 2018, available at <https://www.nytimes.com/2018/10/12/nyregion/congestion-pricing-subway-mta.html?module=inline>

<sup>9</sup> 2020 Education, Labor and Family Assistance Article VII, p. 24

CDR has repeatedly recommended that any unused funds should be made available to all disabled people. Administratively, the State could amend their administrative plans with HUD to set aside a specific amount of Section 8 Housing Vouchers for people in nursing facilities and the State could request that HUD prescribe a higher amount of accessible housing units for people with disabilities. We urge New York State to finally take action on our recommendations.

### ***Institutionalized People are also Experiencing a Housing Crisis***

It is critical that the Governor recognize that being institutionalized is not equivalent to having a home. It is easy to ignore the institutionalized population when discussing the housing crisis because people in institutions technically have a roof over their heads. Federal regulations label people in nursing facilities for more than 90 days as not being homeless and exclude them from federal priority housing programs for homeless people. This is unjust. First, people rarely choose to be served in an institution – they are forced into a nursing facility against their will by a lack of community-based services and accessible housing, and if they were sleeping on a couch they would be considered homeless. Disabled people are turned away from inaccessible homeless shelters and end up in institutions because they are the only accessible option. Then, they lose access to resources for homeless people because they are labeled as housed. As the Governor proposes to continue investment in affordable housing for the homeless through the Affordable Housing and Homeless Capital Plan, CDR urges that the Governor's housing agenda treat the homelessness of institutionalized people with the same urgency as any other homeless person. As a former HUD Secretary, this is an issue where the Governor could lead our country, not just New York State.

### ***Capped Security Deposits Help Disabled People Obtain Housing***

For many people with disabilities, finding an accessible place to live is only half of the challenge. Housing must also be affordable, and while the monthly rent for a unit may be affordable, security deposits requiring the first and last month's rent and an additional month for possible damage serve as a barrier in obtaining otherwise perfect affordable units. Therefore, CDR applauds Governor Cuomo's proposal to limit the amount a landlord can charge for a security deposit. A limit will help individuals with disabilities to save enough money to move into a more comfortable, safe, and accessible home.

## **Employment**

### ***Incentives for Employment of People with Disabilities Must be for All People with Disabilities***

The Governor proposes to push back the sunset date on a tax credit for businesses that employ individuals with *developmental disabilities*. CDR applauds the Governor taking this step to help address the dire reality of unemployment, underemployment, and poverty among disabled people. Even when disabled people are ready, willing, and able to work, we still have to fight stereotypes that we are only “ready” for noncompetitive, segregated employment or pre-employment training, do not want to work, or are simply unable to work. This is a reality faced by *every disabled person*, so it is disappointing that the only point in the Governor's plan meant to address this injustice is not available to a large portion of the Disability Community. Meanwhile, just in December, Governor Cuomo refused to sign legislation that would create a tax credit for small businesses that hire disabled people. The Governor must do more to improve disability employment, and refrain from creating silos within the Disability Community.

### ***Programs Supporting Businesses Owned by Marginalized Groups Must Support Disabled People***

When the authorizing legislation for the minority- and women-owned business enterprise (MWBE) program came up for renewal, and the legislature was holding hearings on ways to improve the program, CDR took the opportunity to remind the State that the MWBE program, the goal of which is to create opportunities for socially disadvantaged entrepreneurs to obtain business contracts, does not serve disabled entrepreneurs even while disabled people continue to face significant disadvantages in obtaining employment. Despite Governor Cuomo touting of the low overall employment rate in New York during his State of the State speech, numbers released last year showed New York as one of the lowest performing states in the employment of disabled people. Meanwhile, disabled people are more likely to be self-employed than nondisabled people, so programs such as MWBE that assist entrepreneurs would be a natural fit for the Disability Community, but the Governor chose to stifle yet another opportunity to support competitive, integrated employment. New York is supposed to be a progressive leader, but cannot even follow the example of our neighbor states, Massachusetts and Pennsylvania, which have already established programs for disability-owned businesses. The Governor is clearly aware of the value of these programs, as his Budget actually *extends* a program to create opportunities for service-disabled veteran owned business. The Governor must treat the entire Disability Community equally and acknowledge that all disabled people face barriers to participating in the workforce and economy.

### **Education**

#### ***ABA is Controversial, Harmful, and “Counter to Everything this State Stands For”***

The Governor calls for expanding Medicaid coverage of Applied Behavioral Analysis (ABA) for Autistic children. ABA is controversial and has been condemned by the Autistic Community for its use of harmful aversives, as well as its focus on compliance. CDR feels strongly that the use of ABA as a therapy trains autistic kids to be compliant and makes them vulnerable to predators. If you are taught to comply with all requests as ABA teaches, you will not be positioned to say no when you are under threat. New York should not be in the business of grooming autistic kids to cooperate with their abusers.

Furthermore, three years ago the Governor moved to ban sexual conversion “therapies.” The practice, which attempts to forcibly change a person’s sexual identity, uses almost an identical methodology to ABA. How can Governor Cuomo say “Conversion therapy is a hateful and fundamentally flawed practice that is counter to everything this state stands for,”<sup>10</sup> while at the same expanding funding to inflict the very same methods on disabled children? The Governor must reallocate this funding to therapies and services that Autistic people – not parents or “professionals” – feel support them best.

#### ***Governor Cuomo is Failing Students with Disabilities***

Governor Cuomo’s concern for Educational Equity is welcome, but his analysis is severely wanting. The Governor would have us believe that the poor school districts are favoring “wealthy schools” over “poor schools,” but facts struggle to support him. In CDR’s hometown of Rochester, every school in the district has a poverty rate over 50% and some of the schools that fall into the Governor’s “wealthy

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<sup>10</sup> Governor Cuomo Announces Executive Actions Banning Coverage of Conversion Therapy, Feb. 6, 2016, available at <https://www.governor.ny.gov/news/governor-cuomo-announces-executive-actions-banning-coverage-conversion-therapy>

school” category have a poverty rate of 88%.<sup>11</sup> If the Governor is truly interested in tackling this inequity, he should look at the disparities between districts and the way property tax rates maintain those inequities. Addressing this inequity would benefit the students in the State far more than taking money from poor schools to give to poorer schools.

The Budget, sadly, makes no attempt to address the decades old issue of the disproportionate identification of African American and Latino students by our special education system. It does nothing to address the legal segregation of disabled students to a separate education system. This system sets disabled kids up for failure. Most of the students in this system have little chance of getting anything more than an IEP diploma: A certificate of attendance that has almost no value to employers or universities. The special education system is also a central hub on the school-to-prison pipeline the Governor says he wants to end. The Governor must offer disabled students an education that gives them real opportunities instead of condemning them to poverty and prison.

Lastly, we applaud the Governor’s efforts to respond to the effects of trauma experienced by many students, but fear that the \$1.5 million he is investing in school mental health is woefully inadequate given the size New York’s education system. Mental health is too serious for the State to try to get by on the cheap; the Governor needs to offer New York’s students the support they need.

### ***Students with Disabilities Still Cannot Fully Benefit from the Excelsior Scholarship***

During his speech, Governor Cuomo touted the success of the Excelsior Scholarship Free Tuition Program as he announced that New York would raise the income threshold for this program to \$125,000 so that more students could benefit. However, raising the income threshold will not help disabled students who cannot access the Excelsior Scholarship.

First, disabled students in New York high schools – especially poor high schools – are often put on track for an IEP diploma which does not qualify for the Excelsior Scholarship. Second, even if a student with a disability obtained the right diploma to qualify for the Excelsior Scholarship, nothing has been done to address the physical and programmatic inaccessibility regularly found on SUNY and CUNY campuses. There are SUNY and CUNY schools throughout New York State that have buildings that students with disabilities cannot enter due to inaccessible doors and paths. There are professors and entire departments who refuse to make reasonable accommodations for disabled students in the classroom. Furthermore, students with disabilities must find other funding opportunities for their classroom accommodations such as assistive technology both hardware and software, books in alternative formats such as Braille or audio, and any other accessible modifications necessary.

If the Governor wants to ensure disabled students have access to the Excelsior Scholarship, he must create accessibility funding sources within the State University Construction Fund, City University Construction Fund, and the Dormitory Authority of the State of New York. These three funding sources pay for SUNY and CUNY capital projects building structures like hospitals, residence halls, student unions/campus centers, academic buildings, and more. He must also ensure that reasonable

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<sup>11</sup> The Real Numbers: Governor Cuomo’s Education Equity Hoax, Alliance for Quality Education, Jan. 2019, available at [http://www.aqeny.org/wp-content/uploads/2019/01/realnumbers\\_FINAL.pdf](http://www.aqeny.org/wp-content/uploads/2019/01/realnumbers_FINAL.pdf)

accommodations are provided for students to succeed in the classroom and paid for by the State. Without the Governor requiring this, New York will be shutting the doors on disabled students.

## **Transportation**

### ***Improving Access to Transportation by Improving Fixed Route and Expanding Paratransit***

Governor Cuomo is, once again, ready to invest a large amount of money into Downstate areas, in particular the area served by the MTA, leaving upstate behind and sorely in need of funding for services such as paratransit. For example, the Rochester-Genesee Regional Transportation Authority has been cutting back on its paratransit service, a direct result of lacking resources to maintain the service. Meanwhile, the fixed route system is being restructured, with plans to shrink the service area – a direct result of expanding ridesharing in New York State. The level of paratransit service is tightly linked to the level of fixed route service, so the changes being implemented in the fixed route system are especially concerning for disabled people since we cannot access alternative transportation options. Many disabled people rely on fixed route and paratransit because there are quite literally no other accessible transportation options, especially since the State has allowed ridesharing without implementing any accessibility requirements. With cuts to fixed route and paratransit, disabled people living in suburban and rural areas will be stuck at home or forced into institutional settings because they are losing access to public transportation. Funding for local transit systems upstate must be increased. As part of improving access, the State must recognize that transportation is crucial to keeping people independent and in the community.

### ***Governor Cuomo Must Implement Accessibility Requirements in Ridesharing***

Maintaining and expanding access to fixed route and paratransit is especially important today as ridesharing threatens revenue to public transportation systems. Ridesharing provided by transportation network companies like Uber and Lyft is inaccessible to many members of the Disability Community, particularly physically disabled people. The State must take corrective action following its dismissal of the Disability Community's needs in 2017 when it allowed ridesharing to operate without imposing accessibility requirements. The Governor must include accessibility requirements for ridesharing to prevent indefinite, blatant discrimination against disabled people and ensure we can use on-demand transportation to get to work, go to the doctor, buy groceries, and participate in our communities just as nondisabled people do.

### ***Taxi Companies Must Provide Accessible Services***

The State has once again failed to address the elephant in the room; while “new” ridesharing services resist being accessible, taxi services, which have been around for quite some time are not completely accessible. Even when a taxi company does have one or more wheelchair accessible vehicles in its fleet, those vehicles are often “tied up” providing Medicaid Non-Emergency Medical Transportation (NEMT) rides for the State.

As things stand, in upstate New York towns where transportation is available, the options are severely limited: taxis, which likely will not provide an accessible vehicle; paratransit, which is strictly limited in service area and operating hours; or medical transportation, which is extremely expensive. The

Governor must stop hoping that ridesharing companies and taxis will eventually come around to providing access to disabled New Yorkers – he must take action to require such accessibility. Governor Cuomo must hold taxi companies accountable for having accessible vehicles in their active fleets, just as he must hold ridesharing companies accountable for the same. Disabled New Yorkers have already been waiting two years for accessible ridesharing, and even longer for accessible taxis. The Governor must stop allowing this blatant discrimination and create requirements to ensure that everyone can ride.

#### ***Extended Autonomous Vehicle Testing Should Incorporate Accessibility Norms***

In the Budget, the Governor proposes extend the time for testing of autonomous vehicles on New York roads, and eventually welcome this exciting technology fully in 2021. Very often, technologies are developed without incorporating standards for accessibility, and disabled people are excluded from the benefits of such technologies while they are retrofitted, if ever, to become accessible. The Governor should make use of the additional testing period of autonomous vehicles to ensure that accessibility is built in at the outset. We urge the Governor to adopt the suggestion, already made last year,<sup>12</sup> that the Commissioner of Motor Vehicles include accessibility in its authority over autonomous vehicle testing. The Governor should direct the Commissioner to report to the Legislature on, in addition to topics such as safety, the level of manufacturer compliance with accessibility norms and standards. This would help ensure disabled people can also benefit from autonomous vehicle technology for mobility, job access, and more. Additionally, assessing and promoting accessibility now could help address the lack of any real accessibility solutions in ridesharing and transportation network companies as that sector contemplates incorporating autonomous vehicles into its fleets.

#### ***Scooter & E-bike Authorization Must Encourage Accessibility and Maintain Access to Public Spaces***

Similarly to facilitation of accessibility in the autonomous vehicle industry, the Governor must adjust his budget proposal allowing local government authorization of scooter and e-bikes to direct the inclusion of such vehicles that are accessible to disabled people in vehicles that are authorized on public roads. For example, the Governor proposes that local governments be allowed to authorize e-bikes, called “locally authorized motorcycles” in the legislation, but narrowly defines such vehicles as being “designed to travel on two wheels.”<sup>13</sup> The proposed definition of a locally authorized scooter requires that they be designed to transport a “person standing.” This definition excludes alternative designs that make scooters and cycling accessible to disabled people. Many physically disabled people use recumbent tricycles or handcycles with three wheels because of their disabilities, and many would require a scooter design that allows them to sit rather than stand. We call on the Governor to prevent the exclusion of disabled people of accessible scooters and e-bikes by acknowledging the variety of designs of such vehicles in their definitions.

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<sup>12</sup> See Governor Cuomo Gambles with Disabled Lives & Liberty, Response to Governor Andrew Cuomo’s FY 2019 Budget, available at <http://cdrnys.org/blog/press-releases/governor-cuomo-gambles-with-disabled-lives-liberty/>

<sup>13</sup> 2020 Transportation, Economic Development, and Environmental Conservation Article VII, p. 103

The Disability Community knows from experience that the proliferation of scooters and e-bikes can cause barriers to accessing public spaces such as sidewalks and bus stops.<sup>14</sup> Therefore, CDR calls on any local government that would authorize the use of scooters and motorized bicycles under the Governor's proposed scheme to take active steps to ensure they continue to fulfill their obligations under the Americans with Disabilities Act. Furthermore, the Disability Community expects the State Division of Human Rights to aggressively combat discrimination against disabled people by public accommodations.

### **Women’s Equality**

#### ***Women with Disabilities Must Have Our Reproductive Rights Protected Too***

In Governor Cuomo’s 2019 Justice Agenda, he promises to codify reproductive rights in response to the “federal assault” on women’s reproductive rights and the threats to roll back Roe v. Wade.

Unfortunately, this goal brings no justice to women and girls with disabilities who can legally be sterilized against their will if they are deemed “unable to give intelligent or knowledgeable consent.”<sup>15</sup> This is an archiac eugenicist policy that remains on the books. While Governor Cuomo claims to be responding to the “federal assault” on women’s reproductive rights, he is doing nothing to stop the actual physical assault on women and girls with disabilities who are forcibly sterilized in New York.

Sterilization is not only irreversible, but it can also cause significant physical and psychological impacts on a woman’s health. Forced sterilization is an act of violence that strips a woman of her bodily autonomy and her human rights. No woman should be subjected to sterilization against their will, and no young girl should have her ability to carry children taken away from her because her adult guardians give consent to the procedure. A woman’s right to make her own reproductive choices and a woman’s right to bodily integrity should not be denied simply because that woman has a disability.

The United Nations is abundantly clear on this subject, finding that forced sterilization of girls with disabilities is a form of violence.<sup>16</sup> The United Nations is also clear that forced sterilization of women with disabilities as a result of a “lawful process” with the consent of legal guardians may constitute as torture, and that it may also be a crime against humanity when forced sterilization is systematically directed against a specific civilian population.<sup>17</sup>

Bodily autonomy, bodily integrity, and reproductive rights are for all women – not just nondisabled women. All women should share these rights equally and if the Governor truly wants to defend against

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<sup>14</sup> Suit Filed Claiming Dockless Scooters Endanger People with Disabilities Using San Diego Sidewalks, Jan. 10, 2019, available at <https://www.disabilityrightsca.org/press-release/suit-filed-claiming-dockless-scooters-endanger-people-with-disabilities-using-san>

<sup>15</sup> Matter of Nilsson, 122 Misc. 2d 458 (N.Y. Misc. 1983).

<sup>16</sup> UN Committee on the Rights of the Child (CRCCCommittee), General comment No. 13(2011): Article 19: The right of the child to freedom from all forms of violence, Feb. 17, 2011, CRC/C/GC/13 paras.16, 21.

<sup>17</sup> UN Human Rights Council, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Jan. 15, 2008, A/HRC/7/3, paras.38, 39.

the assault on women's reproductive rights, he must codify reproductive rights for all women by outlawing forced sterilization of women and girls with disabilities in New York State.

### ***Easy Access to Contraception will Help Disabled Women***

Ensuring access to reproductive healthcare for all can be especially beneficial for disabled women, as we face significantly higher barriers to receiving services. The Governor calls for the passage of the Comprehensive Contraception Coverage Act (CCCA) before any State Budget is signed. CCCA includes a provision that requires healthcare plans to allow individuals to obtain up to a year's supply of contraception at one time. Provisions like this ease burdens on disabled people who face barriers to attending doctors' visits and getting to the pharmacy to pick up prescriptions, which is compounded when we must do so every few weeks. We appreciate this provision in CCCA, and demand similar changes to ease access to the healthcare services and other prescriptions we need to live our lives.

### ***Ending Statute of Limitations on Rape is Not Enough to Help Disabled Women***

It is well documented that women with disabilities experience domestic violence and sexual assault at three times the rate of other women. Unfortunately, the abuse is significantly underreported, and when it is reported, it is likely to go unprosecuted. Women with speech disabilities are told that their case should not go to trial because it would be too difficult for them to testify. Women with mental health disabilities experience gaslighting by police and prosecutors who do not believe them, and women in nursing facilities are threatened that they will lose the care they rely on if they seek justice for their assaults. For disabled women in the community a barrier to coming forward is the lack of accessibility in too many of the domestic violence shelters. The Governor's proposal to end the statute of limitations for rape will undoubtedly help women across New York, but it does not go far enough to help disabled women who are raped at much higher rates than other women. The Governor must enact policies to protect women with disabilities from sexual assault while still respecting our autonomy; to ensure we have the support we need to be able to report the sexual assaults that we endure; and to prosecute our assailters to the fullest extent. To this end, the Governor should work with disabled women to create a taskforce to analyze the pervasiveness of violence against women with disabilities in New York State and create a plan to address the barriers disabled women face when trying to seek safety and justice.

### ***Disabled Girls Should be in Government***

New York State does not have any office dedicated to representing the rights of people with disabilities and the amount of women in leadership roles in New York State government who identify as disabled is abysmally low. We commend Governor Cuomo's plan to create the new Girls in Government initiative to help girls learn how they can have an impact in politics and we urge the Governor to use this as an opportunity to help lift up young girls with disabilities. Disabled girls can and should be the leaders of tomorrow. It is evident from the harmful policies proposed in the Governor's State of the State and Budget that disabled people hold little regard in the Cuomo Administration and in New York State government. This can and must change in order for New York to be the truly inclusive and progressive state that we claim to be. Governor Cuomo would do well to amplify the voices of disabled young women so that future policies for disabled New Yorkers can be made by disabled New Yorkers instead of nondisabled people who do not and cannot understand the experiences of people with disabilities. To accomplish this, the Governor should survey to find exactly how many women in New York State

leadership identify as disabled, then the Governor should seek to increase this number to at least 12.2% in the next five years in order to represent the 12.2% of New Yorkers who are women with disabilities.<sup>18</sup>

## **Social Justice and Civil Rights**

### ***Fairness in the Criminal Justice System Must Include Deaf Access***

CDR applauds the Governor's commitment to ensuring fairness in the criminal justice system, and we urge the Governor to specifically address communication access needs in our system for the Deaf and hard of hearing. Currently, courthouses throughout New York State have public phones available for people to make calls to their loved ones, lawyers, and even their rides. However, courthouses do not all provide Video Relay Systems which are the video phone systems that Deaf people rely on to make calls. This leaves Deaf people at a disadvantage in our courthouses. Furthermore, there is a severe shortage of qualified ASL interpreters in our court system and New York State is doing nothing to address this shortage. Without qualified interpreters, Deaf people cannot communicate with judges, juries, or even understand the courtroom proceedings. Deaf and hard of hearing people have been incarcerated in New York State due to the lack of ASL interpreting resources. Given that Rochester has the nation's largest Deaf population per capita, it is critical that improving communication access be a priority for the Governor as he works to ensure fairness in our criminal justice system.

### ***Bail Reform is Necessary to Provide Justice for Multiply Marginalized Disabled New Yorkers***

CDR supports the Governor's plan to end cash bail and reduce the amount of people held in jail pretrial. Disabled people are far more likely to be below the poverty line, especially in Rochester where 42.1% of disabled people are living in poverty, and often cannot afford bail.<sup>19</sup> Furthermore, multiply marginalized disabled people are far more likely to go through our justice system, especially men of color with mental health disabilities. Oftentimes systematic prejudices are the reason that multiply marginalized disabled people ever even encounter our criminal justice system, and unaffordable bail is what keeps us locked away. It is far past time that we stop jailing disabled people for the crime of being poor. We commend the Governor for working to bring this system to an end.

### ***Compassionate Release Does Not Ensure Justice for Disabled Incarcerated Individuals***

While the Governor's plan to allow for compassionate release of incarcerated individuals who are over the age of 55 and have disabling medical conditions will provide some relief to certain individuals, it does nothing to help other disabled people who will remain in prison. Our prison system is inherently inaccessible and ableist. In New York State prisons Deaf people are forced to use their peers in prison who know American Sign Language (ASL) in order to communicate during meetings rather than having access to qualified ASL interpreters. Additionally, physically disabled individuals must rely on their peers to assist with their mobility. Relying on other incarcerated individuals as a form of an accommodation can set disabled up for failure and exploitation. For example, using incarcerated peers to interpret may result in inaccurate interpreting and cause serious problems for the Deaf individual. CDR

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<sup>18</sup> Disability Statistics. Search results under the category: Gender = Females.

<http://www.disabilitystatistics.org/reports/acs.cfm?statistic=1>. Last accessed January 21, 2019.

<sup>19</sup> Benchmarking Rochester's Poverty: A 2015 Update and Deeper Analysis of Poverty in the City of Rochester available at <https://www.racf.org/Portals/0/Uploads/Documents/News/Publications/RACF-Poverty-Report-Update-2015.pdf>

is aware of at least one circumstance where an incarcerated individual has been refused a power wheelchair and was forced to use a manual wheelchair that he could not propel himself. As an “accommodation” this person was assigned a peer to push his wheelchair. The disabled person was required to go to regular group counseling meetings as a requirement for his release, but he often missed meetings because the person assigned to push him did not want to push him to the meeting across the prison. The individual cannot ask for a new assistant because that would result in retaliation. While we support the Governor’s proposal for compassionate release for older, disabled incarcerated individuals, he must do more to make our prison system accessible for all incarcerated disabled people.

### ***Early Voting Can Only Benefit Disabled New Yorkers if All Polling Places are Accessible***

The Governor has, yet again, committed to enacting early voting and bringing same day and automatic voter registration to New York. This year, the Governor has also proposed making Election Day a State Holiday to help get as many voters as possible to the polls. CDR supports such measures to increase access to the right to vote, and is pleased that the Legislature has just recently passed a voting reform package including measures for early voting, same-day registration, and no-excuse absentee voting. New Yorkers, especially those who face significant obstacles to casting a vote, have been waiting for this kind of State action to make the process easier. However, even with voting rights protections enshrined in law, New Yorkers with disabilities and older persons have been denied equal access to voting in countless ways, both directly by inaccessible polling sites, poorly trained poll workers and long lines, and indirectly by limited accessible transportation.

While CDR is optimistic that provision for early voting and no-excuse absentee voting in particular will enfranchise many disabled people, we caution that the State must continue to systemically improve voter access. We should not see inaccessible polling places in 2019. While expanded use of absentee voting is a positive development, disabled people should not be expected to vote by mail in exchange for a private, independent, in-person vote. Disabled people must be able to vote on Election Day if they choose, and accessible ballot marking devices must be usable at all polling places on primary day, general election day, and during early voting. The Disability Community looks forward not only to the implementation of a voting rights package of bills, but also a commitment to making accessible voting a reality for all disabled New Yorkers.

### ***Protecting the Rights of LGBTQ People with Disabilities***

People with disabilities are a marginalized community, and so the Disability Community respects and commends Governor Cuomo’s commitment to supporting protections for other marginalized communities, specifically the LGBTQ community. We call on the Governor to work with the Disability Community to address the issues faced by people who are multiply marginalized because of their LGBTQ and disabled identities. We want to prevent discrimination against *all* disabled New Yorkers regardless of sexual orientation, gender identity or expression, or LGBTQ status. This discrimination appears in a multitude of ways. For example, in Rochester, there is a transitional and permanent housing program for LGBTQ youth, but which does not offer accessible housing. In this example, LGBTQ youth who are also disabled are being denied critical housing and safety. This type of discrimination experienced by LGBTQ disabled people is common and we must work together to address it.

### ***Environmental Policies Should Preserve Access***

The Governor's commitment to environmentalism and plastic consumption reduction is commendable. We support the Governor's proposal of a plastic ban that does not implicate critical access issues for the Disability Community. Many environmentalists have zealously advocated for plastic use reduction by banning the use of single use plastic straws in food establishments. The Disability Community has, therefore, had to reiterate the necessity of single use plastic straws<sup>20</sup> to our ability to simply consume food and drink. The Governor's thoughtful constraint in focusing on reducing plastic use that does not impede our daily lives is greatly appreciated.

### ***Plan for Reducing Hunger and Food Insecurity is a Welcome Initiative***

CDR commends Governor Cuomo's goal of reducing food insecurity in New York by 10 percent by 2024 and his inclusion of disabled and older New Yorkers in this goal. The Governor's plan specifically includes action towards simplifying access to SNAP for disabled and elderly New Yorkers which is very much needed as almost one third of disabled people live in poverty. We encourage the Governor to direct his staff to work with disabled SNAP beneficiaries to create a plan to reach this goal.

## **CONCLUSION**

Despite some positive aspects, the Governor's Budget did not simply neglect the Disability Community's needs and rights; with a few key proposals, it attacked us by threatening the very services and programs we need to live. The State cannot plan to cut costs by cutting disabled lives. The Governor must work with the Disability Community to create plans that will both save the State money while also saving disabled lives. Disabled and older New Yorkers have the right to live in the community. Instead of working against us, the Governor must work with us to provide true justice for all disabled New Yorkers. If he does, we are ready to work with him.

### ***About the Center for Disability Rights***

*The Center for Disability Rights (CDR) is a disability led, not-for-profit organization headquartered in Rochester, New York, with satellite offices in Geneva, Corning, and Albany. 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.*

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<sup>20</sup> See Grasping at Straws: The Ableism of the Straw Ban, Erin Vallely, available at <http://cdrnys.org/blog/disability-dialogue/grasping-at-straws-the-ableism-of-the-straw-ban/>