



## Center for Disability Rights

# RESPONSE TO GOVERNOR HOCHUL'S FIRST EXECUTIVE BUDGET

February 2, 2022

## Introduction

Each year, the Center for Disability Rights (CDR) closely reviews and responds to the Executive's Budget. CDR's response focuses on the proposed Executive Budget's impact on Disabled people, and, more specifically, how the Budget affects the rights of Disabled New Yorkers and the ability of people with disabilities to live independently in the community.

In some ways, Governor Hochul's Budget promotes a forward-thinking vision for New York. We commend Governor Hochul for including provisions that:

- Increase funding for Independent Living;
- Expand Medicaid eligibility for elderly and Disabled New Yorkers; and,
- Advance restorative justice and reentry services.

Even so, Governor Hochul's Budget misses the mark in ensuring Disability Justice in New York by failing to take action on several critically important issues. Specifically, Governor Hochul's Budget fails to:

- Fund permanent wage increases for CDPAS personal assistants and personal care workers;
- Give Disabled New Yorkers permanent representation in state government; and
- End subminimum wage across sectors.

Worse, Governor Hochul's Budget advances ableist proposals that roll back the rights of people with disabilities. This raises serious concerns about whether Governor Hochul understands and supports the rights of Disabled New Yorkers. These proposals include:

- Extending and expanding the scope of Kendra's law which criminalizes mental health disabilities while rolling back the right of people with mental health disabilities to have their records kept confidential; and,
- Undermining the bodily autonomy of Disabled New Yorkers by giving the State authority to override doctors and Disabled individuals about decisions regarding choice of prescriptions.

We recognize that this is Governor Hochul's first Executive Budget, but in an election-year budget that had something for everyone and was intended to solidify her progressive credentials, her team did her a disservice when it came to Disability Justice. She has the opportunity to address that in her Budget amendments.

## Fair Pay for Homecare: End New York's Crisis

CDR is extremely disappointed that Governor Hochul's Executive Budget did not include wage increases above the minimum wage for personal assistants in the Consumer Directed Personal Assistance Program and personal care workers.

Stagnated reimbursement rates and the increase in the State's minimum wage have created an unprecedented crisis in community-based Long Term Services and Supports (LTSS), and more specifically, in home care. A decade ago, programs like Consumer Directed Personal Assistance (CDPA) paid well over minimum wage. Although these workers were underpaid, consumers were able to attract and retain workers so they could live independently and safely in the community. Today, these essential workers are paid at the State's basic minimum wage. Under Governor Hochul's predecessor, New York State mandated an enhanced minimum wage for fast food workers. Consequently, in upstate New York, although they may provide assistance with feeding tubes, ventilators and medications, CDPA personal assistants received only 88% of the wage they could have earned by handing out burgers and fries at McDonald's, Wendy's and Burger King.

We expected better from Governor Hochul, whose predecessor balanced his budget on the backs of New Yorkers with LTSS disabilities. Although the Governor restored last year's 1.5% cuts to home care rates and included a 1% COLA, this is far from adequate. The wages paid to personal assistants have lagged behind those paid to other Direct Service Providers in the developmental disability and behavioral health systems. Governor Hochul's Executive Budget provides 5.4% COLAs for these other providers, further widening that gap.

The Executive Budget proposes retention bonuses across the healthcare sector. Workers earning less than \$100,000 will be eligible for up to \$3,000 bonuses. This will include personal assistants in the Consumer Directed Personal Assistance Program and personal care workers, but advocates are concerned that the eligibility criteria will exclude a lot of home care workers. While a bonus is better than no bonus, this does not address the structural problems perpetuating the wage crisis.

*CDR calls on Governor Hochul to include a proposal in her Budget amendments to fund permanent wage increases for all homecare workers with a plan to ensure that these workers earn no less than 150% of the regional minimum wage.*

## Give Disabled New Yorkers Permanent Representation in State Government

The Executive's Budget contains an Office of the Chief Disability Officer. We appreciate that the Governor recognizes how Disabled people are not represented in state government, but have significant questions about whether the proposal in her Budget will actually address that. Although not visible in the Executive Budget, it is our understanding that three FTE's – based in the Office of People with Developmental Disabilities (OPWDD) – are funded in the Executive Budget. Our understanding is that the funds will support a Chief Disability Officer (CDO) and two additional staff.

Beyond that, there are still significant questions about the purpose and priorities of that position and office under Governor Hochul. Governor Hochul's Budget identified employment as the top priority. Advocates questioned the Executive Chamber about this and pointed out that – in the context of the unprecedented deaths of Disabled and elderly New Yorkers in nursing facilities and other institutions

– making employment the top priority for the CDO was off point. Now, because the Governor provided limited and erroneous information about this office, the Legislature has begun to pick up that language in their own Budget documents.

We would feel better about this process if there were open lines of communication with the Executive Chamber, who remains silent about the prospects for signing the legislation to reinstate the Office of the Advocate for People with Disabilities (A3130/S1836). CDR has challenged the Governor to meet with us and other advocates from Disability-led organizations if she doesn't intend to sign the legislation. Aside from periodic emails saying there is nothing new to meet about with advocates from Disability-led organizations, communication from the Second Floor has been non-existent.

It is possible that Governor Hochul and her team believe that they have a better approach to meeting the needs of Disabled New Yorkers than the solution advocated for by Disabled New Yorkers themselves. If so, she needs to meet with advocates before taking action. Otherwise, everyone is likely to be disappointed. *CDR calls on the Governor to reinstate the Office of the Advocate for People with Disabilities by signing A3130/S1836 and include funding for this office in her 30-day Budget amendments so there is a clearly articulated role for this office in statute and Budget. If Governor Hochul has any reservations about signing this bill, CDR calls on the Governor to meet with leaders from the Independent Living Community before vetoing it or letting the bill die.*

## **Stop Criminalizing Disability: End Kendra's Law**

CDR opposes the Executive's proposal to extend and expand Kendra's Law. The Governor proposes to extend Kendra's law through June 30, 2027. It also proposes vague language to authorize reinstating orders on individuals without affording them due process and reducing the right of individuals with mental health disabilities to have their records kept confidential.

Importantly, there is no proof that court orders produce better results. A three-year study at Bellevue Hospital compared the impact of providing an enhanced, better-coordinated package of services to two groups, one with and one without a court mandate. On all major outcome measures, no statistically significant differences were found between the two groups<sup>1</sup>.

The proposal to extend and expand Kendra's law is incongruous with an Executive Budget that has multiple proposals intended to address the challenges faced by BIPOC, who are or have been incarcerated. The Governor needs to ask herself why, in that context, she is advancing proposals that further stigmatize and undermine the rights of people with mental health disabilities. For us, the answer is clear: ableism. *Rather than stigmatize and further erode the rights of people with mental health disabilities, CDR calls on the Governor and the Legislature to fix the services that have failed to engage individuals and meet their needs in the first place. To do that, the Governor must engage directly with people who have lived experience as consumers, survivors and ex-patients (CSX) of New York's mental health system.*

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<sup>1</sup> NYAPRS Budget and Legislative Agenda FY2019-20:  
<https://nyassembly.gov/write/upload/publichearing/000963/001955.pdf>

## Eliminate Subminimum Wage Across Sectors

Although Governor Hochul's Executive Budget leans heavily into employment, it is silent about structurally ableist and racist state law that allows some employers to pay workers – including Disabled workers – a subminimum wage. The Governor is clearly concerned about employment of New Yorkers and New Yorkers with disabilities, and she advanced proposals to address that. Perpetuating wage injustice, in that context, is even more egregious. It's time to end this legalized form of discrimination and oppression. *As part of the One Fair Wage Coalition, CDR calls on Governor Hochul and the Legislature to end subminimum wage across sectors.*

*CDR also specifically calls on Governor Hochul to immediately end subminimum wage for Disabled people by issuing an Executive Order that notifies organizations that hold a 14c certificate that their contracts with the State will be cancelled within two years if they don't divest of those certificates.*

## Independent Living Centers

CDR applauds the Governor for including an increase of \$2.6 million in her first Executive Budget. This is the first time an Executive has proposed additional funding for Independent Living in a Budget proposal. Although it is not the full amount we were seeking, this is an increase the Independent Living Centers can build on.

## Health and Long Term Services and Supports

### Managed Care Reforms

CDR wholeheartedly supports Governor Hochul's proposal to have Managed Care Organizations (MCOs) competitively bid for the opportunity to provide managed care in our state.

From the beginning, CDR opposed how Managed Care was implemented in New York State. By having a large number of managed care companies or plans, the base of people served by each plan was significantly reduced. This resulted in plans being less able to meet the needs of people with the most significant disabilities who were seen as unsustainable outliers. Consequently, plans reduced rates and services so that individuals with significant LTSS disabilities were forced to go without assistance and/or were institutionalized.

CDR supports the Executive's proposal and looks forward to working with the Governor, Legislature and the Department of Health to implement it. We believe that this proposal has the potential to be a bold and transformative initiative and address years of problems in that system. Governor Hochul's predecessor never used managed care as a mechanism to promote community integration of people with disabilities, and in fact, it did the opposite by implementing initiatives in managed care that it acknowledged would promote unwanted institutionalization. Governor Hochul can change that. CDR is eager to work with the Hochul administration and the Department of Health to advance this initiative in a manner that promotes the ability of Disabled New Yorkers to live in freedom.

As the state develops the Requests for Proposals (RFPs), it should include components that demonstrate an MCO's commitment to Disability competence and community integration. In the RFP, plans should be expected to demonstrate experience:

- ensuring that the services provided by their network are accessible and Disability-competent;
- maximizing the use of home and community-based services to avoid institutionalization;
- funding transition services to people leaving nursing facilities and other institutions; and,

- contracting with Independent Living Centers and other disability-led organizations as providers in their networks.

The state can also use the RFP and contracting process to make significant changes in how services are delivered. The state could use the RFP process to:

- Establish a high need rate cell which would ensure that plans are adequately funded to support individuals with the most significant disabilities in the community rather than “cherry picking” to serve people with far less significant disabilities;
- Improve transparency by requiring plans to publish the rate of institutionalization of the people they served;
- Require that plans contract with non-profit, Disability-led providers to the greatest extent possible;
- Reduce institutionalization by establishing a penalty for plans when people are institutionalized or implementing some other mechanism which ensures that plans simply cannot offload high-cost individuals with significant disabilities.

*CDR calls on Governor Hochul to work with the Disability community to identify eligibility criteria necessary for the RFP, change policies that will facilitate a smooth transition and continuity of services, and monitor and evaluate implementation of this transition.*

### **Promote Health Equity and Continuity of Coverage for Vulnerable Seniors and Individuals with Disabilities**

The Governor’s proposal would eliminate the Medicaid resource test and raise the income level of the Federal Poverty Level (FPL) for Vulnerable Seniors and individuals with Disabilities. Currently, Aged, Blind and Disabled individuals must spend down income in excess of \$934 per month. The Governor’s proposal expands eligibility to 138% of the FPL, which, in 2022, is \$1,563 a month. This means that individuals can keep their Medicaid without a spenddown if their monthly income is below \$1563. *CDR applauds the Executive’s proposal to expand Medicaid eligibility so that low-income elderly and Disabled New Yorkers are able to maintain Medicaid eligibility after they become eligible for Medicare.*

### **Essential Plan Reforms**

The Budget would expand eligibility under the New York State Essential Plan (EP) by increasing the Federal Poverty Level (FPL) cap to 250 percent. The expansion lengthens eligibility to 12 months after childbirth for pregnant individuals enrolled in the EP even if their income changes to an amount that would have previously disqualified them. The EP would also automatically deem any child born to an EP enrollee automatically eligible for an EP or CHIP for 12 months. *CDR supports expanding the scope of eligibility for the EP to 250 percent of the FPL. As LTSS is implemented in the EP, the state must include the full Medicaid community based LTSS for enrollees to live and work in the setting of their choice.*

### **Pharmaceutical Related Recommendations**

This proposal would discontinue the prescriber prevails provision. This proposal threatens the bodily autonomy of every elderly and Disabled New Yorker and Governor Hochul should understand that a person’s body is something they should have the right to make choices over. The State is saying that you and your doctor are not competent enough to make medical decisions for yourself. *CDR vigorously opposes this invasive proposal and warns the State that it has no business inserting itself into the medical decisions made between a patient and their healthcare provider.*

## **Medicaid Long Term Care Program Reforms**

The Governor's proposed budget would implement Medicaid Long-Term Care program reforms. Part of the proposal would adjust the Medicaid Managed Care reimbursement to individuals providing private duty nursing services to medically fragile adults. Another part of the proposal would modify the implementation of the uniform tasking tool and would allow the Department of Health to develop service authorization guidelines and standards for long term services and supports. The final sections of the proposal would establish a separate licensure process for Programs for All-Inclusive Care for the Elderly (PACE) and expand access to health care coverage and service delivery for individuals in need of long term care services.

CDR supports the Executive's proposal and expects her to include wage increases for homecare workers in her long-term care program reforms. CDR reminds the Governor and the Legislature that homecare is long-term-care and long-term-care is healthcare. Without critical wage increases, more and more elderly and Disabled New Yorkers will be forced into nursing facilities.

## **Nursing Facility Reforms**

The vast majority of elderly and Disabled New Yorkers want to remain in their own homes rather than go into a nursing facility or other institution. Even so, the majority of Medicaid LTSS funding for elderly and Disabled New Yorkers goes into our State's nursing facilities. Over the last two years, thousands of elderly and Disabled New Yorkers died in those facilities. Even so, Governor Hochul's Executive Budget expands the State's investment in these deathtraps with a \$1.6 billion capital program. Of that, \$50 million will be provided to support implementation of a Green House nursing facility initiative – a model for making nursing facilities more “homelike”. CDR notes that a “Green House” nursing facility is still a nursing facility, and these investments are unlikely to improve the lives of the poorest and most Disabled residents in them. These investments are insulting in the context of the State's refusal to address the wage crisis in the home care industry.

We understand that funding for nursing facilities is important to the industry and the unions that represent institutional workers, however, our experience over the last two years has demonstrated the danger of incarcerating Disabled New Yorkers in these facilities – both to the institutionalized individuals and the workers assisting them who are primarily Black Indigenous People of Color (BIPOC).

CDR recognizes that the Governor cannot reverse decades of our State's institutional bias in her first budget, but she could begin the process of ensuring that tax dollars are spent in a manner that is consistent with what elderly and Disabled New Yorkers want. CDR challenges Governor Hochul to increase funding to transition programs such as the Open Doors Transition Center and Olmstead Housing Subsidy Program, which help people transition from institutional settings to community-based living so that they can live in their own home (or apartment) instead of an institution trying to look like a home. CDR calls on Governor Hochul to divert \$50 million of the funds targeted for nursing facility reforms to transition services.

## **Medicaid Global Cap**

The Global Cap on Medicaid was established by Governor Hochul's predecessor as a “Hunger Game” approach to addressing Medicaid budgeting in the State, rationing healthcare by nefariously pitting providers and recipients against each other. Governor Hochul's Executive Budget extends the Global Cap through SFY24 and changes the formula. Under the Executive's proposal, the cap would no longer be tied to the rate of inflation. Instead, it would be based on cost metrics used by the federal Medicaid program which account for the number of people enrolled in Medicaid, as well as factors like age and disability status. The new methodology makes the Global Cap less arbitrary.

However, the cap is still based on historic spending patterns which for more than a decade include inappropriately low attendant wages. CDR is gravely concerned that continuing the global cap – even with these changes – will perpetuate ableist budget policies that are weaponized against New Yorkers with disabilities. *CDR opposes extension of the Global Cap.*

### **Authorize the Pass-Through of any Federal Supplemental Security Income Cost of Living Adjustment**

The Executive’s proposal would authorize Federal Supplemental Security Income (SSI) benefits to be increased in 2023 by the percentage of any SSI Cost of Living Adjustment (COLA). We appreciate that Governor Hochul will not be subsidizing the state budget by stealing the SSI COLA from Disabled New Yorkers. The Governor needs to consider important sweeping changes. Although New York is proud of ensuring marriage equality in our state, Disabled New Yorkers face their own marriage penalty. CDR notes that a married couple on SSI receives less than unmarried SSI recipients. Consequently, some Disabled New Yorkers forgo marriage because by getting married, they won’t have sufficient income. Other Disabled New Yorkers find that it is more cost-effective to maintain separate residences as well. *CDR supports the proposal and calls on the Governor to work with the Disability Community to develop a five-year plan to eliminate the SSI marriage disincentive in our State and give Disabled New Yorkers marriage equality.*

### **Homeless Youth Health Care Consent**

The Executive’s proposal would allow homeless youth to consent to their own medical, dental, health and hospital services. Currently, a minor, including a minor who is homeless, needs the consent of a legal guardian to obtain most health care services. This is important because homeless and runaway youth disproportionately identify as Disabled<sup>2</sup>, with 48 percent<sup>3</sup> of homeless youth meeting the criteria for a mental health diagnosis. *CDR supports the Executive’s proposal because it will facilitate access to routine health and dental care.*

## **Housing**

CDR appreciates Governor Hochul’s efforts, but people with significant disabilities continue to be left in the cold. Governor Hochul includes some positive proposals to increase access to housing, but fails to address one of the most significant policy changes she could make to improve access to housing for institutionalized individuals: recognize that they are homeless.

Although being in a nursing facility or other institutional setting does not mean an individual has a home, they are considered “housed” and unable to be served by programs serving “homeless” individuals. The reality is that unhoused people with LTSS disabilities are often turned away from homeless shelters because they are inaccessible. They are unable to get the services and supports they need if they do not have a permanent residence and are sent to nursing facilities or other institutions. Then, they are considered “housed” and lose access to resources available to other homeless individuals. This is an example of how structural ableism forces Disabled people into institutions. *Governor Hochul and the Legislature need to modify the definition of homelessness in New York to acknowledge that institutionalized individuals are in fact homeless.*

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<sup>2</sup> Reflecting on My Experiences as a Homeless Youth with Disabilities:

<https://disabilityvisibilityproject.com/2021/11/14/reflecting-on-my-experiences-as-a-homeless-youth-with-disabilities/>

<sup>3</sup> Facts and Figures About Runaway and Homeless Youth: <https://rhyclearinghouse.acf.hhs.gov/blog/2019/03/facts-and-figures-about-runaway-and-homeless-youth-0>

## **Permit the Creation of Accessory Dwelling Units**

Accessory Dwelling Units (ADUs) are living spaces that share a single-family lot with a larger dwelling, mainly located within, attached to, or detached from the main residence, generally containing a kitchen, bathroom and bedroom. ADUs were very common before the increase of suburban single-family homes. An example of an ADU is a garage converted into living space. These units are being used to allow a family to support an elderly or Disabled family member to live independently and get support. They are also being developed in response to the housing crisis to meet the need for affordable housing.

The Governor's Executive Budget would require a city with a population of a million or more people to create a program to address Accessory Dwelling Units and provide amnesty for owners of these units. The proposal would also establish a lending program to assist low- and moderate-income homeowners to secure financing and technical assistance to create accessory dwelling units. *CDR supports this proposal.*

## **Facilitate the Conversion of Hotel and Commercial Space into Residential Housing**

The Governor's proposal would increase the housing supply by facilitating the conversion of hotels and commercial office space in New York City into residential housing. *CDR supports the Executive's proposal to repurpose underutilized hotel properties in New York City for housing. However, the Governor has not addressed whether this housing will be affordable for - and accessible to - people with disabilities.* CDR calls on the Governor to ensure that:

- Projects under this initiative are developed in consultation with Disability-led organizations, including Independent Living Centers, and be affordable by people with significant disabilities living on governmental benefits;
- 10% of the units are accessible to people with mobility disabilities;
- 4% of the units are accessible to people with hearing or visual disabilities;
- 15% of the units funded under this initiative should be affordable to people with disabilities living on Medicaid and other benefits; and,
- None of those projects require that a Disabled individual receive support services from any specific provider.

## **Encourage Transit-Oriented Development of Housing**

The Executive's proposal would prohibit cities, towns, and villages from taking action that prohibit housing with density of at least 25 units per acre on any land where residential construction and occupation are already permitted, or effectively prohibiting such housing through excessive restrictions on height, setbacks, floor-area ratio, and other requirements. These provisions would apply to any city, town, or village with residential zoning within a half mile of a bus transportation center or Metro North, Long Island Railroad, Port Authority, or New Jersey Transit station within 60 miles of New York City. The bill would require comprehensive plans devised by such cities, towns and villages to reflect the goal of increasing multi-family housing in close proximity to transit hubs. *CDR supports the Executive's proposal and calls on the Governor to ensure that comprehensive plans explicitly address accessibility and affordability for people with disabilities.*

## **Reform the Use of Credit Checks in Tenant Screenings for Housing**

The Governor's proposal would prohibit housing providers from automatically rejecting applicants based on negative credit history or poor credit in certain situations. It would require housing providers to assess if an applicant is able to show that they have paid their rent on time, that they receive rental subsidies, that the applicant's negative credit history or poor credit score is solely the result of outstanding student loans or medical debt, or that it is a direct result of domestic or dating violence, sexual assault or stalking.

CDR supports this legislation and calls on the Governor and the Legislature to include Disability as an extenuating circumstance. The formerly institutionalized should also be able to substitute on-time payments to nursing facilities in lieu of traditional rental payments to landlords. Acknowledging this will begin to dismantle the exclusionary practices in housing that have been used to exclude the poor, Disabled, formerly institutionalized and other marginalized communities.

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

The Disability Community has long advocated for New York to increase the accessible housing stock across the State by incentivizing the use of “visitability” design standards. This includes basic accessible features, including one no-step entrance, an accessible path to the door, hallways and doorways wide enough to accommodate a wheelchair and an accessible bathroom on the first floor. Legislation advanced by the Disability Community and repeatedly vetoed by the previous Governor would create a new tax credit for purchase, construction or retrofitting of a principal residence to achieve universal visitability pursuant to guidelines developed by the Division of Code Enforcement and Administration within the Department of State and caps tax credits awarded at \$1 million dollars per year for five years. Qualifying homeowners could receive a tax credit of up to \$2,750 to renovate their home to make it more universally visitable, or to go toward the cost of developing a universally visitable home. At the time of writing, the Visitability Tax Credit bills (A3409 (Lavine)/S7365 (Kaplan) have both been reintroduced in their respective chambers. CDR calls on the Governor to incorporate the visitability tax credit into the Budget as part of her budget amendments.

### **Access to Home**

Access to Home provides grants for modifications, assisting elderly and Disabled New Yorkers to avoid institutional placement because their home is not accessible to them. This program allows our State to incrementally increase accessibility in single family homes. Governor Hochul’s Executive Budget, which level funds Access to Home, falls short. Homes and Community Renewal’s (HCR) program typically receives applications for five times the amount of available funding. CDR calls on the Executive, as part of the budget amendment process, to increase funding for Access to Home to \$10 million.

## **Education**

### **Expand the Part-Time Tuition Assistance Program**

The Governor’s proposal would expand access to the Tuition Assistance Program (TAP) for part-time students who are enrolled in degree programs and part-time students enrolled in high-demand workforce credential programs at community colleges. CDR supports this proposal because some people with disabilities are unable to manage a full-time course load, and this will make it possible for more Disabled people to attend higher education or workforce credential programs.

### **Stop Transcript Withholding at Institutions of Higher Education Due to Unpaid Student Bills**

The Executive Budget will prohibit higher education institutions from withholding a transcript or other record of credit attainment from a current or former student on the grounds that the student owes a debt. Transcript withholding is a harmful debt collection practice that prevents primarily poor, BIPOC Disabled students from being able to transfer credits and finish their degrees. CDR supports the Executive’s proposal.

## **Create and Fund a Service System to Meet The Needs of DeafBlind Individuals**

The DeafBlind community is one of the most underserved groups in the Disability Community. Few people – even in the Disability Community – realize that there is no dedicated funding stream to provide DeafBlind individuals with the support they need to be independent – outside of educational or vocational support. Without adequate services and supports, the ability of DeafBlind New Yorkers to participate in society is limited. They may struggle to get their personal needs met and find it impossible to advocate for systems changes that would ensure the independence of DeafBlind New Yorkers. Because Rochester has the highest concentration of Deaf individuals in the state (on a per capita basis), CDR has established a small, self-funded program to support DeafBlind individuals in our hometown. That program, however, is limited and only provides a lifeline to a small number of DeafBlind individuals. It's time for New York State to acknowledge this need. *CDR calls on Governor Hochul to include a Budget amendment to fund a pilot program in Rochester to meet the unique and unmet needs of DeafBlind New Yorkers.*

## **Advancing Restorative Justice**

### **Restore the Tuition Assistance Program (TAP) for Incarcerated Individuals**

Governor Hochul's Executive Budget restores the Tuition Assistance Program (TAP) for incarcerated individuals. CDR supports the Executive's proposal. College opportunity is one of the most productive opportunities that can be offered to incarcerated people. Dismantling barriers to higher education for incarcerated New Yorkers is rooted in racial justice, promotes educational equity and will help incarcerated individuals transition back to community living. *CDR supports this proposal.*

### **Improve Access to Housing for People with Prior Conviction Records**

Governor Hochul's Executive Budget modifies the New York Human Rights Law to prohibit housing providers from automatically rejecting individuals with one or more prior criminal convictions. Instead, housing providers will only be permitted to consider convictions resulting from offenses that involved a threat to the health or safety of persons or property. This change in the law will increase access to housing for individuals with prior convictions, including formerly incarcerated individuals seeking to transition to the community from nursing facilities and other institutions. *CDR supports this proposal because it will begin to dismantle discriminatory practices that undermine the ability of formerly incarcerated individuals to succeed long after they completed their sentences.*

### **Clean Slate Act**

For the 2.3 million New Yorkers with a conviction, a criminal record can limit access to opportunities such as employment and housing. The Executive's proposal would improve opportunities for released individuals by sealing certain felony records after seven years, and, sealing misdemeanor records after three years, following the completion of a sentence. *CDR supports the Executive's proposal because criminal convictions – which disproportionately impact BIPOC Disabled people – should not ban someone from basic opportunities such as employment and housing. CDR notes that the proposal allows for certain records to remain unsealed. CDR firmly believes that a conviction for abuse, neglect or other crimes that impact elderly or Disabled people must not be sealed in the case of employment related to working with these individuals.*

## **Gender-Affirming Treatment of Incarcerated Individuals**

The Executive's proposal would allow incarcerated individuals who have a gender identity that differs from their assigned sex at birth, have a diagnosis of gender dysphoria, who identify as transgender<sup>4</sup>, gender nonconforming<sup>5</sup>, nonbinary, or who are intersex<sup>6</sup> to be placed in appropriate State and local correctional facilities in a manner aligned with their gender identities. The bill would also require the Commissioner of the Department of Corrections and Community Supervision (DOCCS) and the State Commission on Correction to establish rules and regulations that ensure the appropriate treatment of incarcerated individuals who have a gender identity that differs from their assigned sex at birth, who have a diagnosis of gender dysphoria, who identify as transgender, gender nonconforming, or nonbinary, or who are intersex, in the care or custody of the department. *CDR supports the Executive's proposal.*

## **Non-Driver ID Card for Incarcerated Persons**

The Executive's proposal would permit the Commissioner of Motor Vehicles to waive the fee for issuance of a non-driver identification (NDID) card if the applicant is incarcerated in an institution under the jurisdiction of a state department or agency.

CDR supports the Executive's proposal because incarcerated people make pennies on the dollar while incarcerated. Successful reintegration after incarceration depends on how quickly the formerly incarcerated can get valid government-issued photo identification. Tracking down the documents needed to apply for an ID is impossible in many situations. Trying to secure a job or housing is nearly impossible without an ID. *CDR urges Governor Hochul to adopt a similar policy for individuals who are institutionalized in disability-centric settings like nursing facilities.*

## **Facilitate Access to ID Cards and Other Vital Records to Enhance Opportunities for Released Individuals**

The Budget would authorize the Department of Corrections and Community Supervision (DOCCS) to obtain a certified birth certificate or transcript of birth on behalf of an incarcerated individual for the purpose of providing State identification upon release. *CDR supports the Executive's proposal.* This will begin to dismantle the barriers that prevent formerly incarcerated people from obtaining identification.

## **Civil Rights**

### **Codify Language Access Policy**

The Governor's proposal would codify the state language access policy, which requires State agencies that interact with the public to provide interpretation and translation services for vital documents in the ten most spoken non-English languages in New York based on United States Census Data. *CDR supports the Executive's proposal because Disabled people who do not speak English need access to language services.*

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<sup>4</sup> Transgender: An umbrella term for people whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.

<sup>5</sup> Gender non-conforming is a broad term referring to people who do not behave in a way that conforms to the traditional expectations of their gender, or whose gender expression does not fit neatly into a category.

<sup>6</sup> Intersex: The intersex definition is a person is born with a combination of male and female biological characteristics, such as chromosomes or genitals, that can make it difficult for doctors to assign their sex as distinctly male or female.

## **Make Explicit that Discrimination on the Basis of Citizenship and Immigration Status is Unlawful**

The Governor's proposal will make explicit that discrimination on the basis of citizenship and immigration status is unlawful. The bill will add the term "citizenship and immigration status" as a protected class throughout the Human Rights Law. It will define citizenship or immigration status to mean the citizenship of any person or the immigration status of any person who is not a citizen of the United States. All New Yorkers must be able to attend school and obtain housing, employment and credit without the fear of discrimination or harassment. *CDR supports the Executive's proposal.*

## **10 Day Voter Registration Deadline**

The Executive's proposal would amend election law by changing the deadline for voter registration from 25 days before an election to 10 days before an election. This would be consistent with the State Constitution's registration deadline of 10 days before an election. *CDR supports the Governor's proposal to change the voter registration deadline from 25 days before an election to 10 days before an election.*

## **Allow the Transfer of Non-Competitive Employees Appointed Through the State's 55-B and 55-C programs into the Competitive Class**

The 55-B and 55-C programs provide employment opportunities for individuals and veterans with disabilities. Section 55-B<sup>7</sup> of the New York State Civil Service law authorizes up to 1,200 positions normally filled through competitive examination to be filled through the appointment of qualified persons with disabilities. Section 55-C<sup>8</sup> authorizes the designation of up to 500 positions in the non-competitive class to be filled by qualified wartime veterans with disabilities. Governor Hochul's proposal would allow people employed by the State through the 55-B or 55-C programs to move to a competitive class if they meet the necessary criteria. This would enhance career mobility for individuals and veterans with disabilities who joined the State workforce through these programs. *CDR supports Governor Hochul's proposal.*

## **Marriage Certificates**

When transgender individuals seek to update their marriage certificates, the Division of Vital Records' policy is to have the couple divorce and remarry in order to obtain an accurate marriage certificate, purportedly because the original document was witnessed and thus cannot be amended. It is unclear why a new, amended document could not simply be re-witnessed, but this is obviously an absurd requirement with major implications for the lives of married transgender people.

The Governor's proposal would allow name and gender changes on marriage certificates upon receipt of proper proof and would make other changes to the law related to record keeping fees and authority for the Attorney General to compel local government compliance with the law. This will advance the civil and human rights of all people regardless of gender and begin to eliminate barriers that undermine the health, safety and equality of people because of their gender. *CDR supports the Executive's proposal.*

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<sup>7</sup> New York Consolidated Laws, Civil Service Law – CVS § 55-b. Employment of persons with disabilities by the state

<https://codes.findlaw.com/ny/civil-service-law/cvs-sect-55-b.html#:~:text=1.,duties%20of%20any%20such%20position.>

<sup>8</sup> New York Consolidated Laws, Civil Service Law – CVS § 55-c. Employment of veterans with disabilities by the state: <https://codes.findlaw.com/ny/civil-service-law/cvs-sect-55-c.html>

## **Provide Gender "x" Options at All Public-Facing State Agencies**

The proposal would require all State agencies to update all applicable forms and data systems to include a gender "x" option so that all New Yorkers have the option to use either male, female, or gender "x" as an identifier on forms that collect gender or sex data. CDR notes that many Disabled people – and many Autistic individuals in particular – identify as gender-fluid or gender non-conforming. Providing an "x" option will uphold the dignity of transgender and gender non-conforming New Yorkers with and without disabilities. *CDR supports the Executive's proposal.*

## **Require Polling Sites on College Campuses**

The Executive Budget would require local Boards of Election to establish one or more polling sites on college campuses whenever a contiguous property of a college or university contains 300 or more registrants who are registered to vote at an address on that contiguous property. The polling location must be on or nearby such campus or property and must be recommended by the college or university and agreed to with the local Board of Elections. Providing such a polling site will particularly benefit Disabled college students who may face additional barriers to getting to an off-campus polling site. *CDR supports the Executive's proposal.*

## **Establish the Gender-Based Violence Training Institute**

The proposal would create a Gender-Based Violence Training Institute (GBVTI) within the Office for the Prevention of Domestic Violence (OPDV). OPDV will develop the GBVTI in consultation with relevant, culturally responsive community-based organizations and statewide advocacy organizations. OPDV will create a mandatory 40-hour training certification for domestic violence advocates, offer train-the-trainer certification and offer ongoing continuing education opportunities to ensure that New York's domestic violence services system is trauma-informed, survivor-centered, and culturally responsive. It is important to note that domestic violence against Disabled people can look very different than "traditional" domestic violence. Examples of disability-specific domestic violence include taking communication equipment or a wheelchair away from the individuals, leaving the individual in bed or threatening to send an individual to a nursing facility. *CDR supports the Executive's proposal and urges that the Training Institute and certification include a disability-specific component.*

## **Infrastructure**

### **Authorize the Dormitory Authority to Provide its Services to not-for-profit corporations**

The Governor's proposal would provide the Dormitory Authority of New York State (DASNY) with authorization to provide financing, design, and construction services to not-for-profit organizations for capital infrastructure projects. Expanding DASNY's scope will provide access to vital capital for not-for-profits embarking on capital projects. *CDR supports this proposal with the caveat that funds should not be used for facilities that segregate people with disabilities.*

## **Revenue**

### **Extend the Tax Credit for Companies who Provide Transportation to Individuals with Disabilities for an Additional Six Years**

The Executive's proposal would extend the corporate franchise tax credit for companies who provide transportation to individuals with disabilities for six years. *While CDR supports the proposal, we urge the Governor to reflect on how this proposal is rooted in structural ableism. New York State*

government should not have to create a tax credit to get people to not discriminate against Disabled people.

### **Extend the Workers with Disabilities Tax Credit for Six Years**

The proposal would extend the workers with disabilities tax credit for six years. The credit provides tax incentives to employers of qualified full-time employees with disabilities. CDR supports this proposal.

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## **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 the 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.