

Center for Disability Rights, Inc.

February 27, 2015

Re: Written Testimony to the Joint Budget Committee on Workforce Development

Thank you to the Joint Committee for this opportunity to comment on the 2015-2016 Executive Budget. My name is Adam Prizio and I am the Manager of Government Affairs at the Center for Disability Rights. The Center for Disability Rights (CDR) is a disability led, not-for-profit organization headquartered in Rochester, New York. CDR advocates for the full integration, independence, and civil rights of people with disabilities. CDR provides services to people with disabilities and seniors 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.

This year, the State has the opportunity to make real and meaningful progress improving integration and community living for people with disabilities in New York. The 2015-2016 Budget contains a number of initiatives which will make this opportunity a reality, including the commitment to Community First Choice (CFC) and the allocation of CFC funding to further the goals of the Governor's Olmstead Plan, the proposed amendments to the Nurse Practice Act, and the process of consulting with stakeholders around the creation of an Office on Community Living. We are very excited about and strongly supportive of the ambitious direction that is laid out in the Budget for future years.

At the same time, these initiatives are an ambitious plan for the future of New York, but many of the existing and proposed programs and services in the Budget do not include people with disabilities. Many of these programs have tremendous potential to help our community live in integrated home and community settings, if they are properly funded and designed to include us. Particular attention must be paid to wages for workers in Consumer Directed Personal Attendant Services, supported employment programs to assist people with disabilities to work and succeed in competitive, integrated workplaces rather than exploitive subminimum wage workshops, and incentives for employers to recruit, hire, retain, and promote people with disabilities. We urge the Committee to address these issues in order to ensure that our community survives to see this ambitious agenda become a reality in future years.

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CDR is advocating on two broad areas of policy that are relevant to the Joint Budget Committee on Workforce Development: first, ensuring implementation of CFC and the full integration of people with disabilities into the life of New York, upstate and downstate; second, securing access to health care for all New Yorkers. Accordingly, we advocate for the following policy positions with respect to Workforce Development.

The State must establish and fund a living wage for consumer directed personal attendants.

The Budget calls for New York to raise the minimum wage to \$10.50 statewide, and \$11.50 in New York City in 2016.¹ The creation of a living wage is a laudable goal, and raising the minimum wage is a good step in this direction, but – even in this Budget – the State has not provided the funds needed to pay attendants in Consumer Directed Personal Attendant Services (CDPAS) a wage commensurate with their work.

The State has established and funded a living wage for some attendants working in traditional home care. Unfortunately, other attendants – including those who work in the consumer directed model – have had their wages held flat for years because of cuts in Medicaid rates and implementation of managed care. Attendants and fiscal intermediaries in CDPAS are in dire straits. Consumers are unable to hire and retain attendants because wages have remained so low. Some managed care organizations have pointed to the fact that there are no living wage requirements for CDPAS workers as a reason that they are free to cut the rates for this program.

The Consumer Directed Personal Assistance Association of New York State has recommended that legislation be passed requiring managed care organizations and Medicaid to reimburse fiscal intermediaries an amount sufficient to pay attendants at a living wage, at 150 percent of the minimum wage, while still meeting all of their other financial obligations. Without adequate wages, individuals with disabilities will be unable to attract and retain workers, and in some cases will be forced into institutions, which are more costly than home and community settings, but which are guaranteed to be funded through Medicaid. For the sake of the State's own sound fiscal health, as well as the rights of people to live in home and community settings, the 2016 budget must establish and fund a living wage for CDPAS attendants.

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

Section 14(c) of the Federal Fair Labor Standards Act (FLSA) contains an exemption that allows employers to pay people with disabilities a wage that is less than the Federal minimum wage if the worker is working in a “sheltered workshop.” Organizations that employ people with disabilities, including non-profit organizations that claim it is their mission to empower disabled people, take advantage of this exemption; some may pay people with disabilities as little as \$0.22 per hour. Not only do these organizations pay workers less than the minimum wage, they are also subsidized by tax credits. This shameful practice must end. People with disabilities must be paid a competitive wage.

Governor Cuomo's ambitious social agenda includes initiatives that promise to make wages fair, create sustainable jobs, and to protect the rights of workers. The budget has called for New York State to raise the minimum wage to \$10.50 per hour, statewide, and \$11.50 per hour in New York City because, as the Governor has said, “a reasonable minimum wage is the only way to improve the standard of living for workers, reduce poverty, encourage fair and more efficient business practices, and ensure that the most vulnerable members of the workforce can contribute to the economy.”

¹ Education, Labor, and Family Assistance (ELFA) Budget, p. 310.

The Governor has also called for the creation of a reform package to protect New York's most vulnerable workers from abusive tactics by employers. The first item that the Governor brings up, in connection with this reform package, is a study showing that one-third of job seekers at certain agencies were offered jobs at less than the existing minimum wage of \$7.25 per hour. The Governor is correct that payment of less than the minimum wage is an abusive tactic that employers use to enrich themselves at the expense of workers, and he is correct to call for an end to this form of abuse. *Notably absent from these initiatives, however, is any discussion of ensuring that people with disabilities also receive the minimum wage.*

Although the FLSA is a Federal law, New York has the power to override it: states are free to set a higher minimum wage than the FLSA requires, and to close exceptions such as this. Our neighboring state, Vermont, closed its last sheltered workshops in 2003, and in 2012 its integrated employment rate for people with developmental disabilities was twice the national average.² As New York State raises the minimum wage for all New Yorkers, it must include all New Yorkers with Disabilities. The State must repeal the laws that allow sheltered workshops to operate in New York, and that make them eligible for tax credits for employing people with disabilities.

The State Procurement program should include disability-owned businesses in the definition of Minority and Women-owned Business Enterprises.

The Governor has called for the State Contracting process to increase opportunities for Minority and Women-owned Business Enterprises (MWBEs) up to 30% of total state utilization. The current utilization exceeded 25% during the 2013-14 fiscal year, the highest in the program's history, and up from 10% when Governor Cuomo took office. The success of this program, which assists MWBEs to participate equally in state contracting, is tremendous.

Business enterprises owned by people with disabilities should be included in the definition of MWBEs, for the purpose of state contracting. The purpose of the MWBE program is to improve the economic prospects and entrepreneurship opportunities of people who have historically been excluded from these things. It is well documented that people with disabilities experience poverty at much higher rates than non-disabled people, and that we are the targets of discrimination. Including people with disabilities in the MWBE program will create incentives for us to start our own businesses and participate more fully in the economic life of the State.

If the State will not include businesses owned by disabled people in the MWBE definition, it must at least include people with disabilities in the feasibility study that the Department of Economic Development is conducting to study the economic disparity effects of the MWBE program. The effects of including people with disabilities in the MWBE program have never, to our knowledge, been studied. New York has an opportunity to again be a leader in improving the lives of its disabled citizens by looking at the feasibility of including us in this program.

The State Procurement Process should require State Contractors to recruit, hire, promote, and retain people with disabilities in all roles within their organization.

All State contractors should be required, as a condition of their contract, to take affirmative action to recruit, hire, promote, and retain qualified individuals with disabilities in all roles including leadership roles within their organizations.

² *Subminimum Wage and Supported Employment*, National Council on Disability, August 23, 2012, available at: <http://www.ncd.gov/publications/2012/August232012/>

The U.S. Department of Labor's Office of Disability Employment Policy has found that people with disabilities are underrepresented in management, technical, and professional roles, and are overrepresented in service, production, and transportation roles.³ The State, as a model employer, should use its procurement process to require contractors to address this disparity by recruiting, hiring, promoting, and retaining hire people with disabilities in all roles including leadership roles within their organizations.

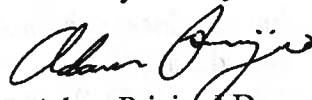
Tax credits for job creation should include incentives for hiring disabled employees.

The 2015 Executive Budget calls for the creation or expansion of a number of tax credits for companies to create jobs in New York State. Specifically, the Excelsior Tax Credit is expanded to include entertainment companies which create or retain jobs in New York, including the Excelsior Jobs Credit; the Urban Youth Jobs Program, which replaces and expands upon the Youth Works Tax Credit, with a budget of \$20 million, twice the budget of its predecessor; and the Employee Training Incentive Program, created in this budget, to encourage employers to invest in creating a trained and talented workforce.

With the creation of these programs, the State has an opportunity to address the real and persistent problem of unemployment among people with disabilities. Each of these programs should be amended to include a focus on hiring and training disabled people to work in accessible, integrated jobs at competitive wages.

In conclusion, this year's Budget contains an ambitious social agenda that has the potential to improve the lives of many disabled New Yorkers in the years to come. It is necessary, however, to address as well the gaps in funding which have constrained the growth of community living and integration, and which in some cases have threatened to undo the advances that our community has fought for. It is also necessary to include people with disabilities in all efforts to improve employment outcomes whether through state contracting, tax incentives, or other initiatives. We urge the Joint Committee in particular to ensure living wage funding for workers in Consumer Directed Personal Attendant Services, and to end the discriminatory and exploitive practice of paying people with disabilities less than the minimum wage. I thank the Committee for its attention to these important issues.

Thank you for your time,



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³ *Economic Picture of the Disability Community Project; Key points on Disability and Occupational Projections Tables*, U.S. Department of Labor, available at <http://www.dol.gov/odep/topics/DisabilityEmploymentStatistics.htm>