

March 23, 2020

The Honorable Phil Murphy  
Governor of New Jersey  
225 W. State Street  
Trenton, New Jersey 08625

Dear Governor Murphy:

First, thank you and the many state agency and department leaders and staff for the massive efforts that you have undertaken to provide leadership and mobilize state resources to confront the COVID-19 pandemic.

I write to urge you to use your leadership and vision to take additional steps to protect the welfare of all residents of New Jersey, but especially those with disabilities, during this crisis. Disability Rights New Jersey is New Jersey's designated protection and advocacy system for individuals with disabilities. As you are aware, adults and children with disabilities are among those at the greatest risk in this crisis because so many are in institutions or incarcerated, homeless, seniors or medically compromised, or dependent on others for care. You have already taken important steps by requiring that all individuals in New Jersey stay-at home in order to limit the spread of the disease.

Below, I outline additional steps that we believe are necessary to protect individuals with disabilities in New Jersey. Some are disability-specific but others are universal measures, such as moratoria on utility shutoffs, and Medicaid terminations. Although people with disabilities will be disproportionately affected by the loss of services and benefits during the pandemic, protecting everyone in this crisis is the best public policy. As you have recognized, New Jersey must ensure that all our citizens have access to a safe living situation, medical care and other resources to weather this crisis. To the extent that you have already implemented some of these recommendations, DRNJ thanks you.

*Advocating and advancing the human, civil and legal rights of persons with disabilities*

## **Public Benefit Programs**

**Home Care Services:** Tens of thousands of New Jerseyans with disabilities rely on Medicaid home care services like Personal Care Assistance (PCA) and Private Duty Nursing (PDN) to address their medically necessary care needs in the home.

N.J.A.C. 10:60-1 et seq. These in-home services provide for everything from meal preparation, bathing and toileting assistance to round-the-clock management of tube feedings and ventilators. These services are only more essential to maintain the health of people with disabilities during the current crisis. We request that you direct the Department of Human Services to:

Halt all terminations or reduction of services of PCA or PDN services currently approved for Medicaid beneficiaries, including terminations or reductions in the process of appeal;

Ensure that PCA and PDN recipients have assistance when their care providers are sick or must self-quarantine by (i) creating emergency registries for back-up services and contracting with nursing agencies to provide back-up home care workers, (ii) allowing recipients to hire replacement providers without background checks, processing documents or verifying citizenship to eliminate any unnecessary delay, (iii) suspending overtime limits so that available home care workers can fill unmet needs;

Immediately offer expanded online PCA and PDN provider orientations and permit online provider enrollment to increase the available provider workforce;

Require DHS or Managed Care Organizations to immediately contact each home care services recipient regarding their choices in developing a COVID-19 contingency plan for when their services and supports may be interrupted. For example, rapid implementation of home delivered meals may be required if an individual's personal care assistant becomes unavailable to prepare meals in the home;

Providing funding to community organizations such as Independent Living Centers and developmental disability service providers to establish or expand expedited recruitment processes for emergency back-up assistance for all formal and informal, government and non-government supports and services to close COVID-19 gaps and keep people independent; and,

If public health and medical resources or volunteers are needed to fill extreme gaps in services to PCA and PDN recipients, provide immediate training and technical assistance to these personnel on self-directed assistance, optimizing health, safety, dignity, and independence as imperatives for maintaining the civil rights of people with disabilities and older adults.

**Medicaid:** Direct the Department of Human Services to:

Halt all terminations and redeterminations of NJ FamilyCare/Medicaid eligibility because continued and expanded access to medical care is critical;

Request an expansion of New Jersey's Medicaid waivers or a disaster waiver under Section 1135 to cover additional New Jerseyans, including adults between 26 and 65, undocumented people, and non-medical support services such as housing;

Ensure continuity and availability of services for children and adults who receive in-home nursing and other services and supports through the NJ FamilyCare Comprehensive Demonstration Waiver and New Jersey's Children's System of Care;

For prescriptions, relax "refill-too-soon" rules, provide maximum extended day supplies, and ensure home or mail delivery; and

For Medicaid Home and Community Based waiver services, exercise the use of Appendix K waiver applications for use in emergency circumstances to leverage all resources and authorities to minimize workforce disruption.

**Division of Developmental Disabilities (DDD):** Direct DDD to:

Temporarily remove the individual budget caps that may prevent the approval of respite, personal care services, and additional in-home care;

Allow a fast-track method of approving family members, friends, etc... through the self-directed system so that individuals in independent or home settings have access to necessary care in a timely manner;

Ensure additional funding marked specifically for providers of home and community based services critical to their sustained operations and continued staffing; and

Clarify operational protocols for residential programs that detail how to safely quarantine an individual in a congregate setting, how to ensure the safety of staff who work in the settings, and how they will be supported by the Division and the Department to maintain their operations.

**Department of Health (State Psychiatric Hospitals):** Direct the Department of Health to:

Adopt improved screening and precautions in all state psychiatric hospitals for COVID-19, including universal access to sanitizer for residents and increased and free video and telephonic visiting for all facilities that have suspended family visits; and

Prioritize discharge of any state hospital residents who are currently on Conditional Extension Pending Placement and at high risk, including those who are over 60 years old and/or have underlying health conditions.

**Unemployment and Disability Insurance benefits:** Direct the Department of Labor to extend Unemployment and Disability Insurance benefits for additional weeks and suspend job search requirements.

## Housing

Encourage Chief Justice Rabner to work with the Administrative Office of the Courts to relax requirements for responsive pleadings during foreclosure actions that are filed during the current moratorium on evictions and foreclosures as many individuals will not have access to courts.

Direct every public utility to **halt all utility shut-offs**, and also require them to restore services to all consumers who currently lack water, electric, gas or other essential services.

## Education

Direct all school districts and the New Jersey Department of Education to ensure students with disabilities have equal access to educational opportunities as the general student population such as online or virtual instruction.

Direct all school districts and the New Jersey Department of Education to ensure students with disabilities continue to receive a free, appropriate public education (FAPE) under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973 in the event their schools are closed for more than 10 consecutive days.

Establish a Coronavirus Education Task Force to be chaired by the Commissioner of Education (or his designee) and include representatives of various State agencies, school districts and parent advocate organizations like DRNJ. The CRTF should perform various functions that include, but not be limited to, providing recommendations as to how students with disabilities can receive FAPE during school closures.

Direct all colleges to ensure students with disabilities have equal access to educational instruction as non-disabled students. This includes, but are not limited to, the provision of captioning and screen reader accessibility for online instruction.

## Criminal Justice

Call on local government to **reduce county jail and juvenile hall populations** by suspending the pre-trial detention of people arrested for non-violent offenses and releasing early all those scheduled for release within the next 60 days.

Call on the Juvenile Justice Commission, the Department of Corrections and local government to halt all new admissions to and initiating the removal of youth from detention facilities unless the youth is determined to be a substantial and immediate safety risk to others.

Call on New Jersey Department of Corrections and local government to adopt improved **screening and precautions in all state and county correctional facilities** for COVID-19, including universal access to sanitizer for detainees and increased and free video and telephonic visiting for all facilities that have suspended family visits.

## Planning Considerations

Issue a directive to all medical care providers **prohibiting discrimination against people with disabilities** in offering COVID-19 treatment via rationing of care or treating the lives of people with disabilities, the elderly, and the poor as of less value than others, and prohibiting the unnecessary placement of people with disabilities in nursing facilities and other institutions.

Many individuals with disabilities require assistance with communications and special consideration in pandemic preparedness planning. Provide accessible forms of communication to individuals – such as telephone or text messaging, accessible webpages (large, high-contrast fonts, minimal color, and file formats that can be read by screen readers, and language considerations – for real-time updates of the State’s emergency guidelines and response.

Direct local government bodies and your own department heads to include people with disabilities and disability experts at all levels of government planning to address the needs of individuals with disabilities in the planning process.

Require administrators and service providers of congregate facilities to have policies and protocols in place for staffing and continuity of services to individuals at their facilities or provide for alternative means of care and placement. Where particular services and activities have been suspended due to public health concerns, such as in-person visitation, require such administrators and service providers to ensure reasonable modifications to enable remote alternatives, such as no-cost video and telephone visitation.

In moving to telehealth for patient visits, ensure equity by providing access to the appropriate equipment and training in the use of telehealth by the patient.

Create a state-level SWAT team to maximize communication with vulnerable populations that are at risk per CDC guidelines, learn about emerging problems, prioritize the most widespread and urgent concerns, and respond to them promptly and in a manner that saves lives and protects people's civil rights and dignity. Prioritize the direct support workforce and people with chronic conditions for access to COVID-19 testing.

Assure immigrants, whether documented or not, that they may access public services and testing without fear of immigration consequences.

Support the deployment of the national guard and military personnel to expand hospital capacity by turning empty college dorms and other unused facilities into makeshift hospitals, as Governor Cuomo has recommended in his OpEd in the *New York Times*.

Thank you again for your continuing leadership, and for considering the additional steps outlined above.

Sincerely,

/s/ Gwen Orlowski

Gwen Orlowski  
Executive Director  
Disability Rights New Jersey