



ADAPT

Image description: "ADAPT" text under image of person in a wheelchair with arms raised, breaking handcuffs' chain overhead. Under arching text "Free Our People"

October 7th, 2020

Dear Governor Cuomo:

Downstate New York ADAPT and Capital Region ADAPT are writing to your office with grave concern regarding the recent Health Budget Law. Our chapters are a part of the nation's largest grassroots disability rights organization that advocates for home and community based services to be funded, accessible, and valued in society. We fear the consequences of Chapter Law 56, Part MM § 2-a (v) and § 3, both of which impact Medicaid-funded home care services. Due to the issues that will be outlined in this letter and the COVID-19 crisis, we ask that you issue an Executive Order to repeal or suspend this section of the law.

The current criteria for home care states that consumers must require assistance with just one of a wide range of "personal care" activities to be eligible. However, according to the new criteria outlined in the aforementioned section, consumers would now be eligible for home care services only if they need assistance with "physical maneuvering" in the performance of more than two activities of daily living ("ADL"), unless there is an Alzheimer's or dementia diagnosis. For consumers with such diagnoses, the criteria states that they must require assistance with more than one ADL.

The proposed language dramatically raises the standard that consumers must meet to qualify for care and will jeopardize access to services at a time when demand for such support will be greater than ever. Amid the COVID-19 pandemic, reduced access to services poses a threat to the health and safety of thousands of New Yorkers who are recovering or trying to remain safe from coronavirus.

The changes to home care eligibility are a dangerous move during an unprecedented public health crisis because many people will be deemed ineligible for home care but meet qualifications for nursing home care. Therefore, many individuals who currently qualify for home-based services would be denied them under the proposed law and left with no options except an institutional setting. Given the thousands of COVID-19 deaths in nursing homes this year, we firmly believe that it is not an appropriate time to implement a law that will increase nursing home admissions. As you so eloquently said yourself, "The virus uses nursing homes. They are ground zero. They are the vulnerable population in the vulnerable location."

Inspired by your words, we are concerned that a policy putting more folks at risk of such placement is the wrong move. Your policies and swift actions greatly contributed to the

flattening of the curve, and we can imagine that you do not want to set back our progress with a policy that is poised to cause a resurgence of infections.

Furthermore, it is clear that the implementation of this law would put a large portion of federal matching funds for New York's home and community-based services at risk. New York State currently receives 6% additional funding from the federal government for adhering to the regulations outlined under the Community First Choice Option (CFCO). We are concerned specifically because CFCO mandates that Instrumental ADLs (IADLs), such as shopping and cooking, must be included on the list of tasks with which consumers can receive assistance. However, this new law only discusses ADLs. Additionally, CFCO mandates that there should be no difference in services based on disability type. The different eligibility standard for people with Alzheimer's and dementia presents a potential violation of this mandate. For more information on this, please look at the [CFCO Technical Guide](#) or [42 U.S.C § 1396n\(k\)](#).

We cannot afford the loss of critical Medicaid dollars in the midst of a pandemic during which New Yorkers are safest in their own homes. Allowing such a loss would be inconsistent with New York's exemplary efforts to control the spread of this deadly virus.

In order to protect the health and safety of those applying for home care, nursing home residents, their family members, their support workers, and the larger community, we ask that you issue an Executive Order to repeal or suspend this section of the law. Similar to Executive Order No. 202 recently submitted, we hope that under Section 29-a of Article 2-b of the Executive Law you can also suspend or modify this particular regulation in order to cope with the disaster emergency.

We are confident that New Yorkers will appreciate the effort to ensure the availability of individualized home care services. Such efforts are heroic and consistent with New York's history of strong leadership. People with disabilities and seniors are #NewYorkTough but we need to know that quality home care will be available to us, especially as we weather the coronavirus crisis.

We would greatly appreciate hearing from you in regards to this matter by October 21st, 2020. Your office may contact us directly by email at DNYADAPT@gmail.com, or by phone at 646-709-2510.

Thank you so much for your time, consideration, and support.

Ever upward,
Downstate New York ADAPT
Capital Region ADAPT