

MEMORANDUM IN SUPPORT

A.5367-A (Gottfried) and S.5028 (Rivera)

An act to amend the social services law, in relation to removing certain restrictions on access to home care services; and to repeal certain provisions of such law relating thereto.

The New York Association on Independent Living (NYAIL) is a statewide, not-for-profit membership association, created by and composed of Independent Living Centers across New York State. Independent Living Centers are unique disability-led, cross-disability, locally administered, not-for-profit organizations, providing advocacy and support to people with disabilities of all ages to live independently and fully integrated into their communities. NYAIL strongly supports A10486 (Gottfried) / S08403 (Rivera).

This bill would repeal a harmful policy passed in the SFY 2020-21 budget which limited eligibility for personal care and consumer directed personal assistance (CDPA) for people who require "limited assistance with physical maneuvering with more than two activities of daily living" (ADLs), or for individuals with a dementia or Alzheimer's diagnosis, assessed as needing at least supervision with more than one activity of daily living."

Limited home care (known as level I personal care) provides critical assistance to people who, without it, are likely unable to live alone safely. It prevents injuries and hospitalization, which can often lead to institutionalization, or for these same people to ultimately require a higher level of care. At a time when there is a pandemic tearing through nursing homes and other congregate care settings leading to the deaths of thousands of disabled and older New Yorkers, we need to be ensuring access to home care, not restricting eligibility.

Restricting access to home care in this manner violates the Supreme Court's *Olmstead* decision, which found that people had the right to receive services in the most integrated setting appropriate to their needs. Yet, restricting access to home care in this manner will ultimately lead to worse health outcomes and likely institutionalization for many, costing the State more in the long-term. It is far more cost-effective to provide limited home care than hospital and nursing home care, which a lack of supports and services will inevitably lead to for many.

In addition, the State draws down hundreds of millions of dollars annually because of the additional 6% FMAP New York receives as a result of implementing the Community First Choice Option (CFCO). Yet, New York has put this funding at risk by violating CFCO by requiring individuals meet different ADL requirements based on diagnosis. CFCO requires states to provide CFC services to individuals on a statewide basis and in a manner that provides services and supports in the most integrated setting appropriate to their needs and without regard to the individual's age, type or nature of disability, and or the form of home and community-based services they require (42 CFR441.515).

Further, any state receiving CFCO services is required to "make available home and community-based attendant services and supports to eligible individuals, as needed, to assist in

accomplishing activities of daily living, instrumental activities of daily living, and health-related tasks through hands-on assistance, supervision or cueing 42 U.S. Code 1396N(K)(1)(A).” Further CMS’s CFCO Technical Guide highlights the mandate of both ADLs and IADLs as a means to maximize independence and integration in the community, preserve functioning, and defer or eliminate the likelihood of future institutional placement. As such, the restrictions which require people to require activities with at least 2 or 3 ADLs, depending on diagnosis, is in direct violation of CFCO.

For all the reasons above, NYAIL urges swift passage of A.5367 / S.5028.