

**MEMORANDUM IN SUPPORT
S358 (Rivera)/A1198 (Paulin)(2025)**

A bill to remove certain restrictions on eligibility for personal care and consumer-directed personal care services under Medicaid, which were enacted in the SFY 2020-21 budget

The New York Legal Assistance Group (NYLAG) supports this legislation.

Repeal Illegal 2020 MRT-II ADL Restrictions on Medicaid Home Care Eligibility That Will Discriminate and Cause Unnecessary Institutionalization

NYLAG urges repeal of the restrictions on Medicaid home care eligibility enacted in 2020 that have not yet been implemented because of the Maintenance of Effort requirements of federal COVID funding laws.

1. The Minimum ADL Limit Unlawfully Discriminates Based on Diagnosis, Violating the Americans with Disabilities Act and Medicaid Regulations and Jeopardizing State Funding Under the Community First Choice Option (CFCO)

The 2020 amendments¹ require most applicants for Medicaid home services to need assistance with *physical maneuvering* with **three** instead of only **one** Activities of Daily Living (ADL's).² The sole exception is for those with dementia or Alzheimer's disease, who qualify if they need *supervision* with **two** ADLs. See chart of ADL scoring system on next page. These new limits discriminate based on diagnosis, and jeopardize New York's receipt of over \$500 million/year of enhanced Federal Financial Participation for the Community First Choice Option (CFCO), a federal option under the Affordable Care Act that New York adopted. Soc. Serv. Law § 365-a, subd. 2(bb). The limits will apply to all people applying to enroll in an MLTC plan, or who request personal care or CDPAP services from their mainstream Medicaid managed care plan or the local district (for those excluded from MLTC or managed care).

The standard discriminates against people with vision impairments, traumatic brain injury (TBI), intellectual & developmental disabilities (IDD), and other cognitive, neurological or psychiatric impairments. Even though they have the *same need* for supervisory assistance with ADLs as people with dementia, they will be denied services solely because they are not diagnosed with dementia or Alzheimer's disease. Medicaid law requires "comparable" treatment of all eligible individuals. CFCO services must be provided "... *without regard to the ...type or nature of disability.*" 42 C.F.R. § 441.515.

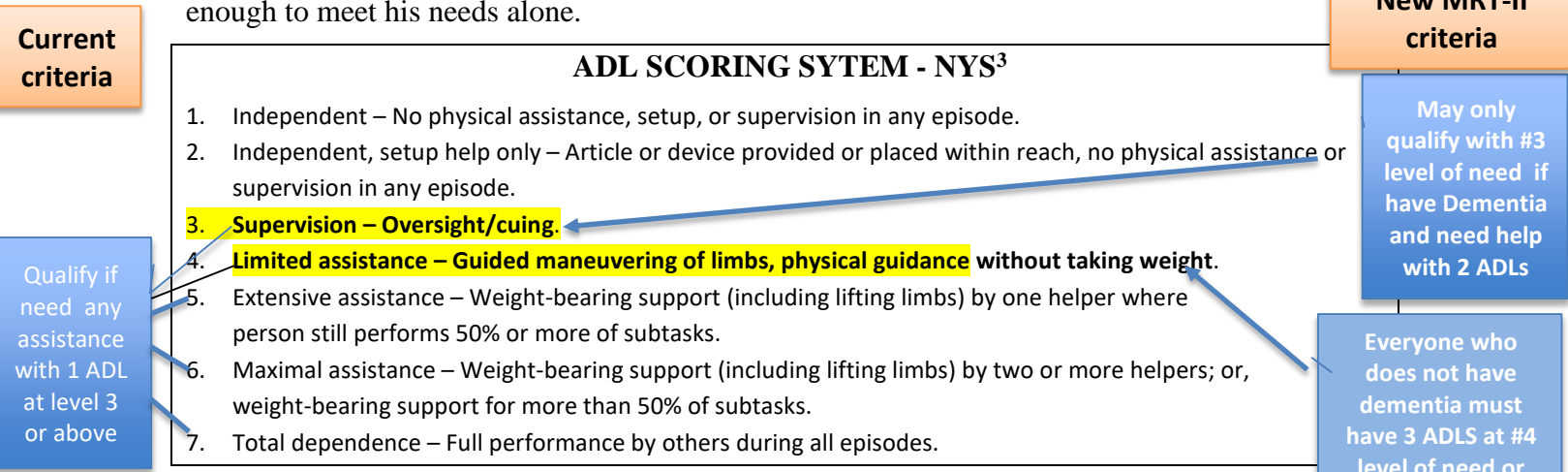
The State Department of Health wrongly claims that people with TBI's or Developmental Disabilities do not need PCS or CDPAP because they have services through the TBI or OPWDD waivers. PCS and CDPAP services, however, are services under the State Medicaid plan, which

¹ Soc. Serv. Law §§ 365-a(2)(e)(v) and 365-f, subd. 2(c)

² ADLs include bathing, dressing, hygiene, toileting/ incontinence care, ambulation, and transfer (getting up and down). Instrumental ADLs ["IADL"] are housekeeping tasks like shopping, meal preparation, laundry or cleaning. Now, a consumer who needs IADL assistance but not ADL assistance can obtain up to 8 hours/week of "housekeeping." The new ADL thresholds will abolish this "Level I" Housekeeping service entirely. See more below .

TBI and OPWDD waiver participants rely on for their core daily needs, supplemented by waiver services like Respite and Community Habilitation.

EXAMPLE: Sam, age 22, is autistic and lives with his parents. Since he needs “supervisory” assistance with ADLs, he would be denied the 84 hours/week of CDPAP he now receives, and could be forced into an institution. The supplemental waiver services he receives are not enough to meet his needs alone.



2. The 2020 Amendment Would END the “Housekeeping” Program – a Cost-Effective Preventive Service – and Jeopardize CFCO Funding

By requiring all applicants to need help with ADLs, the ADL thresholds enacted in 2020 will eliminate the NYS “Housekeeping” program, which provides up to 8 hours/week of “Level 1” personal care services for tasks known as “Instrumental ADLs” (IADLs) or housekeeping services. Some consumers can dress and bathe themselves, but cannot, because of disability, do laundry, shop, prepare meals, or clean their homes. SSL § 365-a, subd. 2(e)(iv). Those needing only IADL and not ADL assistance will now receive *no services at all*, putting them at risk of falls or other accidents that could result in high-cost nursing home or home care. The long wait-lists for the state-funded EISEP program will grow with elimination of this Medicaid program.

Moreover, eliminating this service will jeopardize \$500 million/year in the enhanced federal Medicaid match for CFCO funding. New York has drawn down \$3.6 billion in the enhanced federal match since 2016. Many applicants who fail the new ADL test will nevertheless qualify for CFCO services because they have a “nursing home level of care,” even if they fail the new ADL test. The State risks losing this funding if it denies eligible individuals CFCO services, which include both cueing and physical assistance with ADLs and IADLs. 42 C.F.R. § 441.520(a).

FOR MORE INFORMATION CONTACT

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Rebecca Wallach, Director and Valerie Bogart, Of Counsel
 Evelyn Frank Legal Resources Program
 NEW YORK LEGAL ASSISTANCE GROUP
 100 Pearl Street 19th floor | New York, NY 10004
 t: 212.613.5047/7320 | f: 212.714.7450 vbogart@nylag.org rwallach@nylag.org

³ NYS DOH, UAS-NY Community Health Assessment Reference Manual (August 2022 edition), p. 32, on file with NYLAG.