

February 28, 2023

**Testimony to the Joint Legislative Health Budget Hearing
on the 2023-24 Executive Budget proposal**

Hello and thank you for the opportunity to provide testimony on behalf of the New York Association on Independent Living (NYAIL). NYAIL represents Independent Living Centers (ILCs) and the people with disabilities they serve. NYAIL leads statewide ILC efforts to eliminate physical, communications, attitudinal, and other barriers to all aspects of life. We continue to advocate for the transition of people out of and prevent transfer into institutional settings, carrying on the work and spirit of the independent living movement begun in the 1960s and 70s.

Institutionalizing people in congregate care settings has become an even greater concern to us as transformational investments in reforming long term care as a community based service has been held back by renewed focus on trying to fix issues that are inherent to institutionalization. Never has it been more important for the State to commit to the principles of Olmstead and a Master Plan on Aging by funding vital programs that protect the rights and advance the State's community integration efforts for people with disabilities and older adults. Investing in the below priorities would show real leadership from the State. We urge the Legislature to take action in the 2023-24 budget as outlined below toward the full integration of New Yorkers with disabilities and older adults.

- I. Address the home care crisis by increasing wages for home care workers, as outlined in the Fair Pay for Home Care Act, and opposing the Governor's proposals to eliminate the CDPA program from Wage Parity and decouple the homecare minimum wage with minimum wage increases based on inflation.**

There has long been a home care aide shortage in parts of the State, making it difficult for people in certain regions to obtain home care. However, over the past few years, it has become an acute crisis in all parts of the State from Long Island to Buffalo. The home care crisis is by far the primary barrier to transitioning people from nursing homes back into the community. The State has an obligation under the 1999 Supreme Court decision, *Olmstead V. L.C.*, to provide people with disabilities with supports and services in the most integrated setting, their home communities. Yet the lack of available home care is making this an impossibility for many.

The 2022-23 State budget included small raises for the first time in a decade, but the \$3 increase comes nowhere close to the wage we know is needed to end the home care shortage. Even after this raise, home care workers in most of New York earn just \$16.20/hour to do the essential work of caring for our loved ones.

Now, the Executive Budget undoes the small progress we made in raising wages by exempting home care wages from the minimum wage indexing, ultimately freezing home care wages at \$18/hour until minimum wage reaches the same rate. The issue is further accentuated for the Consumer Directed Personal Assistance Program through the proposed exemption of Wage Parity, which ultimately results in a wage decrease for Personal Assistants downstate. NYAIL strongly opposes these proposals and the Administration's continued de-valuing of home care.

New York State must include Fair Pay for Home Care in the final budget to effectively address the increasing home care crisis. Many older adults and people with disabilities need home care, while the workers who provide their services are paid a living wage. Fair Pay for Home Care also ensures providers paying home care workers would get adequate reimbursement rates, which has been a challenge with last year's increase.

II. NYAIL strongly supports repealing cuts to eligibility for Medicaid community-based long-term services and supports.

The Medicaid Redesign Team (MRT) II was directed to advance policies to achieve Medicaid savings without impacting access to services. Yet, multiple proposals were advanced through this process which would make it much more difficult for certain people to receive community based long term services and supports (LTSS). In particular, the State raised the eligibility threshold for qualifying for LTSS. Now, people must require assistance with physical maneuvering with at least three activities of daily living (ADLs) to qualify. If they have a dementia or Alzheimer's diagnosis they are assessed as requiring supervision with at least two ADLs. The entire cut is directly contrary to Community First Choice Option funds that the State is taking advantage of, especially OPWDD, which prohibits the discrimination of people by diagnosis. The eligibility cuts effectively eliminate level I home care, which provides many people with vital assistance with Instrumental Activities of Daily Living (IADLs) to remain in their homes.

Examples of IADLs are included in the table below and include: cooking, cleaning, grocery shopping, sorting mail, etc. It also sets up a discriminatory standard basing eligibility in part on diagnosis. This policy, if enacted, would put many people at risk of unemployment, injury, hospitalization, and institutionalization. NYAIL urges the State to repeal this policy.

CURRENT ELIGIBILITY REQUIRES ANY ASSISTANCE WITH 1 +:	PROPOSED ELIGIBILITY REQUIRE PHYSICAL MANEUVERING ASSISTANCE WITH 3+:
<ol style="list-style-type: none"> 1. Making and changing beds; 2. Dusting and vacuuming the rooms which the patient uses; 3. Light cleaning of the kitchen, bedroom and bathroom; 4. Dishwashing; 5. Listing needed supplies; 6. Shopping for the patient If no other arrangements are possible; 7. Patient's laundering, including necessary ironing and mending; 8. Payment of bills and other essential errands; 9. Preparing meals, including simple modified diets; 10. Bathing of the patient in the bed, the tub or in the shower; 11. Dressing; 12. Grooming, including care of hair, shaving, and ordinary care of nails, teeth, and mouth; 13. Toileting, this may include assisting the patient on and off the bedpan, commode, or toilet; 14. Walking, beyond that provided by durable medical equipment, within the home and outside the home; 15. Transferring from bed to chair or wheelchair; 16. Turning and positioning; 17. Preparing of meals in accordance with modified diets, including low sugar, low fat, low salt, and low residue diets; 18. Feeding; 19. Administration of medication by the patient, including prompting the patient as to time, Identifying the medication for the patient, bringing the medication and any necessary supplies or equipment to the patient, opening the container for the patient, positioning the patient for medication and administration, disposing of used supplies and materials and storing the medication properly; 20. Providing routine skin care; 21. Using medical supplies and equipment such as walkers and wheelchairs; and 22. Changing of simple dressings. 	<ol style="list-style-type: none"> 1. Bathing; 2. Dressing Upper body; 3. Dressing Lower body; 4. Locomotion; 5. Transfer to toilet; 6. Toilet use: and 7. Eating.

III. NYAIL opposes repealing the RFO process for Fiscal Intermediaries in the Consumer Directed Personal Assistance Program.

The Executive Budget proposes to abandon the contracting process that has been in the works for several years and instead give the Department of Health full authority to determine via emergency regulations a new process for approving and setting standards for Fiscal Intermediaries (FI), with a goal of having MLTCs contract with as few providers as possible. We urge the Legislature to maintain the 2022-23 budget

agreement and require DOH use the RFO and related attestation process to determine eligible FIs moving forward. We believe that the Legislature finally secured a workable plan last year. We urge the State to ensure all Independent Living Centers who want to participate in the program are permitted to do so given the network's role and history in establishing the program and wraparound services that centers provide to their consumers.

a. NYAIL supports inclusion of the Finger Lakes Independence Center in the RFO process.

The drafting of the RFO solution from last year's Budget has inadvertently left one of the pioneers of the CDPA program, the Finger Lakes Independence Center (FLIC). FLIC has been providing FI services in Tompkins County since they received one of the original Developmental Disabilities Planning Council grants that created the program in the mid-1990s. We are asking that the legislature remediate this problem facing FLIC. The existing statute requires that an existing FI apply to the RFO. FLIC did not apply to the RFO because DOH made it known that they were looking at larger FIs that covered larger geographic areas. The FLIC Board of Directors made a very difficult decision not to apply given that information despite wanting to continue their program at its current size of averaging around 100 members. It certainly seemed at that time to be the correct decision, with all signs indicating that FLIC would not be selected through the RFO.

FLIC is the only Independent Living Center of the 11 that operate FIs in this position. FLIC still very much wants to continue in operation and they have not stopped providing FI services to their members in the interim. They are willing to apply, re-apply, or do whatever is necessary to stay in the program and ensure continuity of services to their consumers.

We support the following statutory language, as put forward by Assemblywoman Kelles and Senator Webb, amending last year's Budget to accomplish inclusion of FLIC in the RFO process:

1 Section 1. Paragraph (b-1) of subdivision 4-a of section 365-f of the
2 social services law, as amended by section 3 of part PP of chapter 57 of
3 the laws of 2022, is amended to read as follows:
4 (b-1) [Following the initial selection of contractors on February
5 eleventh, two thousand twenty-one, pursuant] Pursuant to the commission-
6 er's request for offers #20039 ("RFO") in accordance with this subdivi-
7 sion, the commissioner is instructed to accept the offer to enter into
8 contracts with all applicants that [were not initially selected on
9 February eleventh, two thousand twenty-one, but that were] are qualified
10 by the commissioner as meeting minimum requirements of the RFO, provided

11 that such qualified applicants [that were not initially selected] attest
12 that:

13 (i) the applicant was providing fiscal intermediary services for at
14 least two hundred consumers in a city with a population of more than one
15 million at any time between January first, two thousand twenty and March
16 thirty-first, two thousand twenty; or

17 (ii) the applicant was providing fiscal intermediary services for at
18 least fifty consumers in another area of the state at any time between
19 January first, two thousand twenty and March thirty-first, two thousand
20 twenty.

21 § 2. This act shall take effect immediately.

The legislature has been steadfast in its support of the CDPAP program, and the continued participation of independent living within it. We're hoping that despite the inconvenience in reopening this issue that we can ensure that FLIC and its CDPAP members can continue their longstanding and successful relationship which has enabled so many to remain independent in their community.

IV. NYAIL strongly opposes eliminating provider prevails.

The State must ensure qualified prescribers are able to continue to use their best professional judgement regarding which medication their patients require. The Executive Budget proposes repealing an important patient protection in the Medicaid program known as "prescriber prevails" for prescription drugs in the fee for service and managed care programs. A prescriber, with clinical expertise and knowledge of his or her individual patient, should be able to override a preferred drug. Different individuals can have very different responses to different drugs in the same class. Sometimes only a particular drug is effective or alternative drugs may have unacceptable and dangerous side effects. Prescribers are in the best position to make decisions about what drug therapies are best for their patients. NYAIL urges the legislature to recognize the importance of specific prescription drug combinations and protect provider prevails.

V. Expanding eligibility for New York's Medicaid Buy-In Program.

New York's Medicaid Buy-In Program for Working People with Disabilities allows people with disabilities to maintain coverage for Medicaid while they work. This is essential for people who depend on Medicaid to maintain independence and their health with Medicaid provided supports, like personal care attendant services, not covered by employer provided health insurance. People are currently forced to choose between work and their health, and not all working people with disabilities are covered. The program currently limits eligibility by income, assets, and age. NYAIL supports expanded eligibility of the program so that people with disabilities are encouraged to

pursue higher compensation opportunities, remain employed as they build wealth, and not be forced to stop working because of their age.

The Executive Budget proposes elimination of the age limit and an increase to the asset limit of \$300,000, which we strongly support. The proposal also includes increases to the income limits but imposes significant premiums for individual's above 250% federal poverty level based on a sliding scale, up to as much as \$1449/month. NYAIL urges reconsideration of the premium tiers to ensure the program is affordable to those who need it and not a deterrent to working people with disabilities. At a minimum - the premiums should be capped based on a percentage of the individual's income similar to that in the NYS Health Exchange. Copied below is language from the American Rescue Plan law which reauthorized health insurance subsidies and shows the required sliding scale cap, with 8.5% being the highest and the individuals in the lower brackets capped at lower percentages (2%, 4%, 6%, etc.).

PART 7--PREMIUM TAX CREDIT

SEC. 9661. IMPROVING AFFORDABILITY BY EXPANDING PREMIUM ASSISTANCE FOR CONSUMERS.

``In the case of household income (expressed as a percent of poverty line) within the following income tier: percentage is--	The initial premium percentage is--	The final premium
Up to 150.0 percent.....	0.0	0.0
150.0 percent up to 200.0 percent....	0.0	2.0
200.0 percent up to 250.0 percent....	2.0	4.0
250.0 percent up to 300.0 percent....	4.0	6.0
300.0 percent up to 400.0 percent....	6.0	8.5
400.0 percent and higher.....	8.5	8.5''.

<https://www.congress.gov/bill/117th-congress/house-bill/1319/text>

If you have any questions, please contact Alex Thompson at athompson@ilny.org, or at 518-465-4650.

Respectfully submitted,

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