



Consumer Directed Personal Assistance Association of New York State

Repeal eligibility cuts to community-based long term care

Last March, just as a pandemic was ravaging New York, the re-minted Medicaid Redesign Team (MRT II) finalized its cuts to Medicaid. The last minute budget cuts meant thousands were suddenly deemed “not disabled enough” for home care services, while thousands more were suddenly “too disabled” to receive them. This was despite the fact that many had been successfully utilizing these services for decades. The proposals also jeopardize hundreds of millions of dollars in additional Medicaid Federal matching funds due to violations of the Community First Choice Option (CFCO) and mean seniors and people with disabilities in need of community-based long-term care will be refused, at best causing them to deteriorate until they need costlier services, and at worst forcing institutionalization.

More than 70,000 seniors and people with physical disabilities use CDPA as an alternative to home care or institutionalization. To access these services, they must be on Medicaid and go through multiple assessments to ensure both need and safety. The new law tightened the definition of need by defining activities of daily living (ADLs) for the first time and requiring physical assistance with three, with specific conditions allowing for two. They also prevented those seeking services from visiting their own health care providers, who have been authorizing services for years, instead implementing new, onerous, and duplicative safety checks for those receiving over twelve hours of service per day, despite no clinical evidence that this group is more at-risk when receiving services in the community.

The new eligibility rules make an already byzantine enrollment process even more onerous and appear designed to deter or disqualify those with complex conditions. In doing so, they seemingly violate the Supreme Court’s mandate in *Olmstead v L.C. (by Zimring)*. While individuals with a need for assistance with only two ADLs may not qualify for community-based services, they often still qualify for institutional care in nursing homes. Further, the regulations promulgated to institute the new law require an analysis of whether it would be more cost-effective to serve individuals in institutional settings such as a nursing home or adult home than for them to receive home care or consumer directed personal assistance (CDPA), even if community-based services are safer and more effective.

The violation of Federal rules continues beyond the *Olmstead* mandate and jeopardizes hundreds of millions in additional Federal matching funds from the ACA’s community first choice option. Arbitrary enrollment criteria that differ based on disability violate the anti-discrimination provisions of CFCO which clearly state that eligibility may not vary based upon type of disability. The law further violates the CFCO provisions with its increased scrutiny of those requiring higher levels of service because the Federal law prevents discrimination based on severity of disability as well.

The new law is especially terrifying due to the devastation of COVID-19. People want care at home more than ever. It is unconscionable that this law will effectively repopulate institutions by eliminating access to better services in the community. While the CARES Act has prevented these new rules from being implemented, the state is now utilizing a Trump Administration change in the interpretation of the Maintenance of Effort rules to fast track them.

Medicaid eligibility cuts are wrong in the best of times. However, during a pandemic, when over twelve thousand have died in nursing homes, they are dangerous. The law must be repealed to protect safety and the state budget.

CDPAANYS is the only statewide association solely representing fiscal intermediaries, consumers and personal assistants in Consumer Directed Personal Assistance (CDPA). For more information, please contact us at 518-813-9537 or bryan@cdpaanys.org.