

**MEMORANDUM IN SUPPORT**  
*A.10486 (Gottfried) / S.08403 (Rivera)*

*An act to amend the social services law, in relation to eligibility for medical assistance for personal care services for persons with traumatic brain injury, cognitive impairments, developmental disabilities, blindness, or visual impairment.*

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 A.10486 (Gottfried) / S.08403 (Rivera).

This bill would make important technical fixes to a 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."

Level one home 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.

This bill is necessary in order to expand the categories of diagnoses that qualify an individual for personal care if, because of their impairments, they need supervisory or cueing assistance with ADLs. While someone with a cognitive disability such as traumatic brain injury or developmental disability may not require assistance with more than two ADLs, they may require supervision and cueing in order to complete these same tasks. An individual must be found to meet the threshold if, because of any cognitive impairment, they need cueing and supervisory rather than physical assistance with the required number of ADLs. Otherwise, the restriction that allows only people diagnosed with Alzheimer's disease or dementia to qualify based on the need for supervisory assistance is discriminatory.

Similarly, for people who need assistance because of blindness, the need for cueing or supervisory assistance with two ADLs must be considered sufficient to qualify for personal care or CDPAP. When an individual is visually impaired or legally blind, the risk of falls becomes much greater. Many people lose their vision as they age and lack the necessary skills to live safely. Personal care aides are literally another set of eyes for the impaired

person, providing assistance for them to safely navigate in their homes and communities, and to perform basic daily activities.

The minimum ADL requirements in the enacted budget appear to have been attempted to align the Medicaid criteria for personal care with the U.S. Tax Code's definition of a qualified long-term care insurance policy. See 26 U.S.C. § 7702B. However, under the tax code, one is qualified for long term care without any minimum number of ADLs if they "[require] substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment." 26 U.S.C. § 7702B (c)(2)(A)(iii). Otherwise, two ADLs are required. The New York statute is far more strict, requiring two ADLs even for people with cognitive impairments. To ameliorate the potential harm of this restriction, the need for cueing or supervisory assistance with two ADLs must be sufficient to qualify an individual who has a cognitive or visual impairment for personal care or CDPAP.

For all the reasons above, NYAIL supports A.19486 / S.08403.