

## **MEMORANDUM OF SUPPORT**

*A.10489 (Gottfried) / S.8337 (Rivera)*

*A bill that amends the definition of the "look-back period" and transfer penalties for the determination of eligibility of an individual for medical assistance benefits for community-based long-term care services, as recently enacted in the 2020-21 New York State Budget.*

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.10489 (Gottfried) / S.8337 (Rivera) because it makes several technical fixes to the newly established lookback period for home care which aligns statute with lookback policies for nursing home eligibility.

The 2020-21 enacted budget established a 30 month lookback period for people applying for home care on or after October 1, 2020. This lookback period would mean that if any assets were transferred in the previous two and a half years at less than market value, the difference between the full price and the amount it sold for would count as though the person still owned that asset. This could make people ineligible for Medicaid.

This bill clarifies that assets that were sold or transferred before the law goes into effect on October 1, 2020 will not count against applicants. When the nursing home lookback period was extended from three years to five, there was a phase-in period. This allowed families to plan accordingly and ensured that people would not be penalized for transfers that were made during a time period when it was allowed under current statute. No such phase in period was included in the 2020-21 enacted budget for home care. We believe this was an oversight. A.10489/S.8337 seeks to create a phase-in period to ensure that applicants are not penalized for transfers made as far back as 2017, years before the lookback was enacted.

Further, NYAIL supports this bill because it ensures that applications based on "immediate need" for home care are processed in a timely manner by allowing the applicant to attest that no prohibited transfers were made. The bill does not change the requirement to submit the 30 months of financial records, but the local district can authorize home care within 12 days based on attestation, while the applicant has 30 days to submit complete records. If documentation submitted later reveals an eligibility issue, this can be investigated without unduly delaying critical home care services.

Finally, Section 2 of this bill would create a uniform and clear statewide policy that would not impose a penalty when assets have been returned to the individual or used for the individual's benefit. The public policy behind implementing a lookback and transfer penalty is to ensure that applicants for Medicaid use their resources to pay for their own care and expenses, rather than transfer wealth. Where the transferred funds have been used on the applicant's behalf, such as by paying the applicant's rent, mortgage, assisted living fees, or for private home care, it furthers no public policy to penalize such transfers. This language would ensure a fair and consistent statewide policy, allowing the penalty to be reduced where the transferred funds are returned or were demonstrated to have been used on the applicant's behalf.

For all of the reasons above, NYAIL urges swift passage of A.10489/S.8337.

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