Testimony of

Consumer Directed Personal Assistance Association of New York State to:

Joint Legislative Budget Hearing

on Health

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Good afternoon Chairpersons Krueger and Weinstein, and Health Chairpersons Rivera and Gottfried, and all the Legislators here today. I appreciate the opportunity to deliver the testimony of the Consumer Directed Personal Assistance Association of New York State (CDPAANYS), the only organization in the state dedicated solely to strengthening the state's Consumer Directed Personal Assistance (CDPA). CDPAANYS represents the interests of the more than 140,000 CDPA consumers across the state, as well as the fiscal intermediaries (FIs) who administer the services on their behalf.

Our testimony provides a detailed examination of the SFY 2023 budget, however for convenience we have included a brief summary of CDPAANYS' key priorities and positions.

Home care worker pay

- New York has a worst in the nation home care shortage that prevents tens of thousands of disabled and older New Yorkers from accessing long-term care services they need to live at home and in their communities.
- While we appreciate the recognition, the bonuses proposed by the Governor will not solve the workforce crisis or lead to the investments necessary to rebuild our crumbling community-based long-term care system. These bonuses may also cause harm by disrupting much needed benefits such as SNAP or housing subsidies workers are forced to rely on due to the poverty level wages Medicaid currently provides.
- Enactment of Fair Pay for Home Care, as written in A6329A/S5374A is the solution to the home care crisis. By guaranteeing home care workers 150% of the highest minimum wage in a region, or $22.50 across the state, Fair Pay for Home Care as envisioned by Assemblymember Gottfried and Senator May would end the workforce crisis and lift hundreds of thousands of workers into the middle class.

Medicaid Global Cap

- Due to the expensive nature of long-term services and supports, the Medicaid Global Cap inflicts disproportionate harm to disabled and older New Yorkers in need of these services. While we appreciate the efforts at reforming the formula, the fact remains that it is an arbitrary formula driven not be need but numbers. Reforms cannot and will not end the discriminatory nature of the cap and it should instead be repealed entirely.

Eligibility

- CDPAANYS supports Governor Hochul's proposal to create parity between MAGI and Non-MAGI Medicaid populations, eliminating harmful rules that made it more difficult, and time consuming, for those in need of long-term services and supports to qualify and recertify for Medicaid. However, adding more people to the program is only effective if services are available to all consumers, and without addressing the home care workforce shortage, this proposal will merely leave more people without the services they need to live independently in the community.
- CDPAANYS supports the expansion of the Essential Plan to 250% of Federal Poverty, with its inclusion of long-term care services provided by Medicaid. However, the expansion cannot be successful at creating meaningful offsets to Medicaid if Fair Pay for Home Care is not enacted to deal with the home care workforce crisis.

- CDPAANYS was highly disappointed that draconian eligibility cuts put in place by the former administration were not repealed in this budget. Provisions that restrict eligibility, in the form of minimum activity of daily living requirements, combined with policies that are targeted at directing high hour individuals to nursing homes are not in keeping with New York's values and will lead to higher costs. In particular, the ADL requirements will further limit the effectiveness of the Essential Plan expansion at slowing the shift to Medicaid by denying necessary personal care services to individuals, leading to continued private pay and more rapid physical and economic decline.

Across-the-board increases and restorations

- The restoration of the 1.5% across-the-board cut is a positive step; however this provision only applies to fee-for-service Medicaid, which makes up a fraction of the overall system. This restoration must be applied across the entire Medicaid system.
- The 1% across-the-board increase in Medicaid rates is welcome, and applies to services provided through managed care as well as fee-for-service. However, like past proposals, there are no requirements for these funds to be directed to providers, which history has shown will prove a windfall for plans while providers continue to suffer. Meaningful steps must be taken to ensure rate add-ons of any form are passed directly and equally to providers in a meaningful manner.

Consumer directed personal assistance empowers people with disabilities and older adults to direct their own services to best meet their needs and lifestyle and employ and train their own Personal Assistants (PAs) to help with a range of tasks we all perform each day. Without these supports, those who rely on this program would have diminished opportunities for community engagement at best, and be in imminent danger of injury or forced institutionalization. Even now, many of these individuals routinely face threats of institutionalization when they undertake such basic efforts as requesting an increase in hours from their managed long-term care plans.

CDPAANYS also counts among its members 41 fiscal intermediaries (FIs), entities that provide administrative support to consumers in the form of payroll processing, workers compensation, state regulatory compliance, and other services. These agencies also work directly with their consumers to counsel and ensure that they are able to successfully utilize their program and remain in the community. FIs contract with managed care organizations (MCOs) and local departments of social services (LDSS) who reimburse for services through Medicaid and whose reimbursement rates determine PA pay.

While costs have continued to rise steadily, Medicaid reimbursement has stagnated over the past decade. This has forced FIs to operate on nearly impossible margins and driven PA wages to the lowest of any industry in the state. It has rendered access to CDPA services, once touted by the Executive and Department of Health (DOH) as the best available long-term care option, increasingly tenuous as consumers struggle to recruit and retain fewer and fewer available workers.

At $216 billion, the proposed FY 2023 Executive Budget is $23 billion more than last year's. The state's financial picture has been looking rosier than expected and the cause for much optimism, with an infusion of federal funds and a $13 billion tax revenue surplus, there is reason to believe we have finally turned a corner on the global health catastrophe and resulting economic hardships of the past two years.

After the shock of discovering a mass coverup of over 15,000 nursing home deaths by the end of 2020, Governor Hochul gave hope to those in CDPA and the broader community using and providing community-based long-term supports and services (LTSS) by making commitments to substantial investments in healthcare, including into the workforce. The Governor's call for healthcare workforce investments in her State of the State, investments that create "good paying middle-class jobs," provided hope to a community and industry facing a 'worst in the nation' workforce crisis driven by low wages.

Unfortunately, it seems this optimism was misplaced. While providing substantial wage increases for hospital and nursing home workers, the Governor's proposed budget fails to address the low wages for home care workers and the workforce crisis stemming from it. Seemingly well-intentioned proposals to increase access to home and community based services (HCBS) including CDPA would potentially exacerbate the problem by expanding the number of Medicaid consumers seeking PAs from an increasingly shrinking pool.

There is a solution that is ready for implementation in the form of the Fair Pay for Home Care (A.6329/S.5373), which was not included in the Executive Budget proposal, but that we fervently advocate being added in the final legislation. Passing Fair Pay will end the workforce crisis and ensure access to CDPA for all eligible consumers. It will also bolster the state and local economies, of which many across the state are struggling and losing residents due to lack of job opportunities, and lift hundreds of thousands of workers out of poverty and on the path to the middle class.

What this proposed budget offers PAs and other home care workers is the opportunity to receive up to $3,000 dollars from the $1.1 billion in Federal American Rescue Plan (ARPA) allocated to DOH. After a decade of falling wages, temporary or one-time pay bumps that are not available to all home care workers are not a replacement for wage increases and do not have the individual, social, or economic benefits that pay raises provide.

Governor Hochul's budget is an improvement over those proposed and passed under the previous administration in some respects. Restorations of past across-the-board Medicaid provider rate cuts are critical and should be expanded beyond only the fee-for-service reimbursements. Likewise, we support the 1% across-the-board increase in reimbursement that will include both fee-for-service and managed care payments. Further, the provisions that will increase Medicaid eligibility, including expansion of the Essential Plan and raised income thresholds for non-Medicaid Adjusted Gross Income (MAGI) qualification will benefit approximately 20,000 New Yorkers according to most estimates. However, without significant and permanent worker pay increases, these changes will simply add more Medicaid consumers to an already crumbling infrastructure.

It is CDPAANYS' mission to protect the rights of all New Yorkers to live at home and be active members of their communities whether they are in need of those services today, or at some point in the future. Not only is the state aging rapidly, everyone here will likely need these services at some point, as Father Time remains undefeated and, if we are lucky, we will all become older. To fulfill our mission, all Medicaid-eligible New Yorkers entitled to HCBS must have full access to them, and this is the platform on which we frame our budget priorities each year. The proposed SFY 2023 budget is less destructive than years past, but “less destructive than before” is not a bar we should aim for. It fails to take any meaningful steps towards fixing the root of the home care workforce crisis that is preventing thousands from filling authorized service hours and leaves in place onerous CDPA and personal care eligibility cuts enacted in the FY 2021 budget. Within this testimony, we have identified what is necessary to accomplish this aim through the passage of a strong, inclusive budget.

Home care worker pay must be raised

‘Worst in the nation’ workforce crisis

New York prides itself on being a national leader in social progress, but it also boasts the shameful distinction of having the ‘worst-in-the-nation home care’ workforce crisis. The Mercer Corporation[1] projects 83,000 workers too few to meet need by 2025, and estimates that as of today the state is almost 25,000 workers short. This is a problem that affects every corner of the state, evidenced by frequent news coverage of those unable to receive home care because of staffing shortages. Failing to correct it disregards the civil rights of people with disabilities and older adults, who according to the Americans with Disabilities Act (ADA) as interpreted in the landmark Supreme Court decision in *Olmstead v. L.C. (by Zimring)*, must be provided services in the least restrictive setting possible.

Low pay is the cause of this protracted crisis. In a report published by CDPAANYS, 52% of consumers surveyed indicated that their PAs quit due to low wages. When other factors effecting take home pay are included, such as insufficient hours or changed jobs out of the industry are included, that number rises to two-thirds.[2]

Indeed, workers in the home care sector represent the lowest paid workforce in healthcare and in general. This was not always the case, as home care workers wages in 2006 were 162% of the minimum wage across much of the state. This made the position an attractive one, and consumers and agencies were able to recruit and retain a highly qualified and dedicated workforce. Over the past decade, health care worker pay has decreased relative to other industries and home care workers today often earn the minimum wage. Consumers have competed for workers with the restaurant and retail industries for years as they were able to offer less pay, but now it is nearly impossible as fast food are mandated to pay their employees

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[1] Stevenson, M. (2018). *Demand for Healthcare Workers Will Outpace Supply by 2025: An Analysis of the US Healthcare Labor Market* (Rep.). Mercer. Accessed on February 1, 2022. https://www.mercer.com/content/dam/mercer/attachments/private/gl-career-2018-demand-for-healthcare-workers-will-outpace-supply-by-2025-analyisis-healthcare-labor-market-mercer.pdf

[2] P. (2021). *The High Cost of Low Wages: A Home Care System in Crisis* (Rep.). Albany, NY: CDPAANYS. Accessed on February 1, 2022. https://cdpaanys.org/report-a-home-care-system-in-crisis-the-high-cost-of-low-wages/

$1.80/hour more than PAs Upstate and other businesses have raised their wages to keep with the larger labor shortage. For instance, while PAs receive $13.20/hour in Rensselaer County, Amazon is hiring at $17/hour in their warehouse.

As the workforce shrinks, more and more consumers forgo services they need to live at home. Again, CDPAANYS' report *The High Cost of Low Wages* found that more than one third of consumers lost a PA during the COVID-19 pandemic that they were unable to replace and that one in every five consumers reported that they had unsuccessfully been attempting to recruit new PAs for over a year.[3] These consumers are not getting some or all of the assistance with activities of daily living (ADLs) necessary to live safely at home, which can include getting into and out of bed, bathing and grooming, meal preparation, and other basic tasks that able bodied individuals may take for granted. Put another way, these consumers face immediate risk of injury and forced institutionalization due to a lack of available workers.

Bonuses do not address the problem

The Governor used both her State of the State address and her budget to propose a $4 billion investment in health care worker raises and bonuses. Numerous proposals will increase wages permanently for hospital staff and nursing home workers. However, when it comes to those workers who were forgotten during COVID-19, who were often accosted by law enforcement during lockdowns because they were not advertised or recognized as "essential", the only wage increase was the already scheduled minimum wage increase.

Instead, the Governor proposes to spend $860 million of Federal money, with no state investment, on home care worker bonuses of "up to" $3,000. Of course, many of the same hospital and nursing home workers who received wage increases will also be eligible for this bonus, so long as they earn under $100,000 per year. For home care workers, it is clear that these bonuses are too little, too late.

The bonuses themselves are insufficient to have a lasting impact on the lives of workers and the way in which they are structured will lead to harmful consequences. The amount of money a healthcare worker would get from this bonus fund would depend on the amount of hours worked over two six-month "vesting periods". Those who do not meet the minimum required would not receive any compensation and those who do not meet certain thresholds would earn less than other workers. Those who earn the full $3,000 bonus would need to average forty hours/week, every week, during both vesting periods. Initial estimates from 1199 were that this would account for less than 10% of the home care workforce.

In CDPA, the measure will cause further complications. Since scheduling PAs is the responsibility of consumers, and dividing hours between PAs could impact the additional pay, the possibility for tension and resentment is high, leading to potential situations where even more PAs quit, or impacting the quality of care that consumers receive.

Even if a PA receives the full bonus amount, those working Upstate will still earn less hourly

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[3] Ibid.

than the fast food minimum wage when aggregated across the year. A fast food worker working 40 hours per week will earn $14.64/hr. when their wages and bonus are averaged together, nearly $750 less annually than someone working for a $15 minimum wage would make. It is clear that bonuses do not provide a retention incentive for PAs.

Lastly, while bonuses can be distributed quickly, they do not provide the lasting benefits to workers and the economy that wage increases do and could do harm. While not sustainable, the bonuses will increase income for two monthly periods, as well as for the year. Given the low wages home care workers receive, many rely on public benefits such as Medicaid, SNAP, and housing subsidies. Sudden influxes of cash have a direct impact on continued eligibility for these means tested programs. While Medicaid qualification will not be immediately impacted due to Federal Maintenance of Effort requirements on eligibility, qualification for other benefits is not as clear cut. For example, a home care worker in a family of four working full-time would likely see their eligibility for SNAP terminated due to the bonus, even though that income will not continue on a permanent basis, thereby eliminating any positive effect of the limited benefit.

Fair Pay for Home Care is the answer New York needs
Fortunately, there is a better option for addressing the workforce crisis - S.5374-A (May)/A.6329-A (Gottfried) - otherwise known as “Fair Pay for Home Care.

Fair Pay for Home Care is a comprehensive solution to New York’s workforce crisis that will immediately begin to increase the capacity for recruitment and retention; strengthen local economies from the inside out, and create the long-term investment in HCBS necessary to afford all New Yorkers the chance to live independently at home.

The proposal requires home care workers, including PAs, be paid 150% of the highest minimum wage of the region in which they work, which would amount to $22.50 across the state. By structuring it in this way, the wage for this critical workforce is indexed to future increases in the minimum wage so as to prevent the steady decline in wages from repeating. By establishing minimum rates of reimbursement, the bill ensures that licensed home care services agencies and fiscal intermediaries have the reimbursement necessary to pay these higher wages, including from managed care plans, and that this remains true into the future.

When we ensure that low-income families receive more money, it is a well-established economic fact that they spend these funds on rent, groceries, and other goods. Therefore, not only would New York ultimately save money by paying this workforce enough that they would no longer need to rely on public assistance programs to live. It would also allow the state to earn additional revenue from the increased tax base of both the workers themselves, the businesses at which they would be spending their wages, and from the new employees of these local businesses, hired to meet the increased demand for services.[4] Indeed, the economists indicate that Fair Pay for Home Care turns the notions of economic development and neighborhood revitalization on their heads - increasing investment in local communities by

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[4] Jabola-Carolus, I., Luce, S., & Milkman, R. (2021). *The Case for Public Investment in Higher Pay for New York State Home Care Workers Estimated Costs and Savings*. New York, NY: CUNY School of Labor and Urban Studies.

paying those who live there more and building the local economy and quality of life not through gentrification and replacement, but through lifting up those who already live there.

Fair Pay for Home Care is also popular with the public. a study released by the New York State AARP found that 93% of older adults surveyed support publicly funding long-term care so that individuals may age at home instead of being placed in a nursing home.[5]

Based on data garnered from the Medicaid Managed Care Operating Report (MMCOR), it is assumed that Fair Pay for Home Care, as proposed, would have a full year cost of $4.9 billion, representing a $2.45 billion state cost at traditional FMAP levels. With a proposed January 1, 2022 effective date, this means that the proposal would cost New York approximately $612 million in SFY 2023 at that same 50% FMAP split. However, because New York is set to receive an additional 6.2% in Federal funds during the pandemic, which is expected to continue at least through this next fiscal year, means that the SFY 2023 budget impact will be approximately $536.5 million. When other Federal incentives, such as the 6% in additional FMAP from Community First Choice are factored in, the cost continues to decrease.

The state is using $861 million in Federal funding from ARPA to pay for the bonuses for home care workers. However, it has until March 31, 2024 to spend that money. This means that the SFY budget could allocate $536.5 million, or less, to pay for the first quarter obligations of Fair Pay for Home Care and not spend a dime of state monies. Meanwhile, There would be about $325 million in ARPA funds to pay out year costs, which would be reduced due to the economic benefits described in the CUNY report and outlined above, meaning that New York could potentially fully fund Fair Pay for Home Care and, because of the Federal ARPA funding and economic benefits, never see a financial plan impact.

Medicaid Global Cap reforms do not address root problems

One of the primary factors driving the divestment in home care over the past decade has been the arbitrary Medicaid Global Cap, a legal ceiling on Medicaid spending tied to the ten-year rolling average of the Consumer Price Index (CPI) medical inflation rate. While promoted as an objective tool to contain spending, it is inherently discriminatory to people with disabilities and older adults who rely on Medicaid for services that by their nature lead to dramatically higher costs. Since the global cap's implementation, it has been used as an excuse to avoid increasing inadequate reimbursement rates that are the cause of the workforce crisis while also demonizing CDPA and home care, as well as those who rely on it, in order to justify eligibility cuts that, if enacted in Alabama or Mississippi, would have been cause for a national outcry from Medicaid advocates.

This budget proposal from Governor Hochul preserves the cap while altering the formula to utilize the Centers for Medicare & Medicaid Services (CMS) National Health Expenditure

[5] Reisman, Nick. "AARP Finds Support for Home Care Worker Wage Boost." *New York State of Politics*, Spectrum News, 1 Feb. 2022, https://nystateofpolitics.com/state-of-politics/new-york/ny-state-of-politics/2022/02/01/aarp-finds-support-home-care-worker-wage-boost?cid=share_twitter. Accessed 1 Feb. 2022.

Accounts projected five-year rolling average of Medicaid spending. The reality is, the methodology one uses to develop an arbitrary spending cap does not alter the fundamental fact that such a cap is, by its nature, arbitrary. Regardless of the methodology, fundamental issues about enrollment, the cost of goods and services, and the cost of services in New York as opposed to the rest of the nation mean that this new iteration of the cap will still serve to negatively and disproportionately impact those who need Medicaid most, disabled and older New Yorkers in need of LTSS with no other option for where to receive their services.

The budget should instead eliminate the Medicaid Global Cap altogether and rely on the will of the Legislature and Executive to allocate funds annually, based on need. Establishing today the extent to which Medicaid funds will increase five years from now makes no more sense than my determining today what price I am willing to pay for a car in 2028. There are just too many factors that can change to reasonably predict the need, regardless of the formula that is applied.

Eligibility

Parity for MAGI and Non-MAGI populations

Medicaid has long established different eligibility requirements based on whether or not individuals required long-term care services. While streamlining resource tests, recertifications, and other eligibility criteria for those who needed Medicaid for basic health insurance, those who needed long-term care were subject to lower income thresholds, more cumbersome recertifications, and stricter resource requirements.

As a steering committee member of Medicaid Matters NY, CDPAANYS supports Governor Hochul's proposed Medicaid eligibility reforms that would increase income eligibility increase from 100% of the federal poverty level for non-MAGI Medicaid to 133%, even with the MAGI population, and the elimination of the household resource limit for these consumers. This provision is important and creates eligibility equity for Medicaid, something that is long overdue.

However, increased eligibility for Medicaid is of little use if those who are newly qualified cannot access the services. With licensed home care service agencies (LHCSAs) already unable to staff cases and consumers in CDPA unable to identify PAs to work for them, the increased eligibility for those needing long-term care will merely result in a greater number of people who cannot receive the services they need and to which they are entitled based on eligibility criteria and assessments.

Increased eligibility for Essential Plan and addition of long-term care benefits

The budget also expands the state's Essential Plan to 250% of the Federal Poverty Level (FPL) and include long-term care services otherwise covered by Medicaid in the benefit package. The Essential Plan is not administered by Medicaid. It is a coverage plan for those who do not meet the income limit for Medicaid eligibility but cannot afford private health insurance, offering free or heavily discounted premiums to enrollees.

The budget assumes a $110.5 million savings to the Medicaid program as a result of this proposal. This logic is consistent with previous funding increases for the state's Expanded In-Home Services for the Elderly Program (EISEP), and assumes fewer people will qualify for Medicaid because of the more generous coverage in this non-Medicaid plan.

CDPAANYS will always support greater access to services, increasing the number of people who can receive LTSS in the community; however, the same problems identified with the creation of parity between the MAGI and Non-MAGI populations in Medicaid also exist with this proposal. Increasing the number of people who qualify for HCBS services does not mean that these services will be available. The moves will place even greater reliance on a system that cannot come close to meeting demand now, and as CDPAANYS saw in *The High Cost of Low Wages,* in desperation people will resort to private paying for services on the gray market or supplementing wages paid by the agencies, meaning that the effort to slow their qualification for Medicaid will be doomed to fail..

Failure to repeal MRT 2 cuts

While the eligibility expansions will allow approximately 20,000 individuals access to HCBS services who previously did not have them, the failure of the budget to repeal the devastating eligibility cuts imposed at the start of COVID-19 by former-Governor Cuomo means that many, even with this new access, will not qualify for the services. The requirement that individuals have a minimum need of physical assistance with at least three activities of daily living (ADLs), unless they have Alzheimer's, dementia, or a serious mental illness, means that many who are newly qualfied pursuant to the eligibility expansions proposed by the Governor will not actually qualify for the services.

An inability to receive these services while individuals have lower needs has been demonstrated in a study by the United Hospital Fund's Medicaid Institute to result in higher costs for acute care services while personal care services are not being provided, costs that are maintained in the system once those services switch from acute care to personal care. Meanwhile, the provision of care at lower thresholds actually reduces reliance on hospitals and other acute care costs and lowers the total expenditure on personal care long-term, with a higher likelihood that the individual will remain stable at a lower number of hours of a longer period of time.[6]

Without repealing these harmful Medicaid cuts, which have not yet been implemented and cannot be until after the COVID-19 public health emergency is over, the eligibility increases from expanding access through the Essential Plan and creating parity between the MAGI and non-MAGI populations will be muted at best, and meaningless at worst.

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[6] CITATION NEEDED for UHF Report

Pass New York Health

While increasing health coverage is always a laudable goal, the New York Health Act (NYHA) with a long-term care benefit is the fairest and most efficient way to do so. The NYHA would not only establish a single-payer health option that would be less expensive than private health coverage for the vast majority of residents, it would legally mandate adequate provider rates so that there are enough workers available for all HCBS eligible consumers. Rather than the state subsidizing additional MCO premiums as is current practice under the current Medicaid structure, of which 18% can legally be spent on non-care costs referred to as the Medical Loss Ratio, NYHA would cut out the “middle man” to create an affordable option and increased choice for consumers. It would also remove the motivation to reduce service access in the name of finding “efficiencies” and a much larger risk pool reduces the relative expense of covering individuals with complex medical conditions.

Across-the-Board rate restoration and increase

Though CDPA and other HCBS were largely neglected in the proposed budget and must still fight for worker raises, eligibility restriction repeals, and other changes, there were a few bright spots for providers and program integrity. The 1.5% across-the-board provider rate cuts from the previous year will be restored for fee-for-service providers and there will be an increase of 1% to be applied in 2023. Unfortunately, there is no word as to whether this will impact the per member per month payments that FIs were switched to, and which bear no relationship to the differences in cost per region. We also will note that these increases are appreciated, there are no assurances that they will be passed on from managed care plans. Indeed, many increases have not been passed on in the past.

When analyzing the SFY 2023 budget, every proposal must be looked at through the lens of an industry that is in collapse. Consumers cannot hire. LHCSAs cannot hire. FIs are having up to 60% of the consumers sent to them by plans never begin service because they cannot identify staff and therefore initiate the services the plan had previously authorized them for. Bonuses, while a nice sentiment, cannot undo the situation we are in and coverage expansions merely expand the population of individuals unable to find workers. Action must be taken and an investment in this sector made. Without Fair Pay for Home Care, this budget will fail disabled and aging New Yorkers looking to remain in the community.