



Support Olmstead and generate over \$350 million in revenue for New York State each year:

Support the Nurse Practice Act amendment necessary for full implement of the Community First Choice Option

BACKGROUND

WHAT IS THE COMMUNITY FIRST CHOICE OPTION?

The Community First Choice Option (CFC) is a federal government initiative that incentivizes the provision of long term services and supports (LTSS) in the community, as opposed to nursing facilities, institutions, intermediate care facilities, and large group homes. It allows states to meet the required obligations under the Supreme Court's Olmstead decision, which ruled that states must provide services and supports in the most integrated setting possible. CFC provides a *permanent* enhanced Federal Medical Assistance Percentage (FMAP) of 6%. This means that for all CFC services provided to eligible individuals, the state will receive a 56% reimbursement, as opposed to 50%. For New York, CFC will generate new net revenue of approximately \$350 million every year.

WHO IS ELIGIBLE FOR CFC?

To be eligible for CFC, an individual must qualify for Medicaid, either through state plan services or the home and community based services waiver. In addition, the individual must be eligible for an institutional level of care. He or she must qualify to receive services in a nursing facility, Intermediate Care Facility, or an institution for mental disease. CFC offers a unique opportunity to change the way the State, providers, and insurers think about the provision of LTSS in New York. **LTSS will be based on what services are necessary to successfully live in the community.** CFC was designed to assure that services and supports are provided in a manner that allows people to lead an independent life with a strong focus on consumer direction. **CFC supports choice, independence, and integration in accordance with the Supreme Court's Olmstead decision and allows for individuals with disabilities to receive vital services out of an institution and in their community.**

WHAT SERVICES DOES CFC COVER?

When Congress enacted CFC, their intention was for the program to be broad and encompass the full spectrum of services to support people in the community **regardless of type of disability.** CFC breaks down the "silos" that have historically existed to allow for a wide array of services to be included. In New York's State Plan Amendment (SPA), CFC includes all Activities of Daily Living (ADLs), Instrumental Activities of Daily Living (IADLs), and health-related tasks through hands-on assistance, supervision, and/or cuing. Additionally, CFC supports individuals by assisting them in the acquisition, maintenance, and enhancement of skills necessary to accomplish their ADLs, IADLs, and health-related tasks. Backup systems or mechanisms to ensure continuity of services and supports, voluntary training on how to select, manage, and dismiss attendants, and services and supports linked to an assessed need or goal in the individual's person-centered service plan are integral to CFC. Services will be provided through the utilization of an "advanced aide" to perform tasks which will be assigned by a nurse.

WHY AN NPA AMENDMENT IS NEEDED

To fully implement CFC, an amendment to the Nurse Practice Act (NPA) is necessary. The change will allow nurses to assign health related tasks to a trained aide. Without an amendment only nurses will be allowed to perform these tasks. This is not feasible due to high costs, limited size of the nurse workforce, and federal CFC guidelines. Tasks, such as catheter maintenance, will only be assigned to advanced aides if the nurse supervisor determines that they can be safely delegated. **This model has been successfully employed under CDPA for two and a half decades using family members of consumers to train workers instead of nurses.** Families have been successful in training individuals to perform nursing tasks, including suctioning and ventilator care, even for members who are unable to direct their own services.

THE PROBLEM

Under New York State law, the NPA prevents attendants from providing assistance with health related tasks needed for individuals with disabilities to live in the community. Failure to amend the NPA will result in New York State not being to fully implement the CFC.

Failure to address this problem will result in:

- Needless institutionalization of people with disabilities and seniors due to the unavailability of home/community-based alternative for individuals unable to manage their own attendant services
- Continued violation of the civil rights of individuals with disabilities under the Americans with Disabilities Act as clarified in the Olmstead decision, creating a clear threat of legal action against the state.
- New York State failing to leverage \$519 million in federal funds which generates over \$350 million in surplus revenue every year after paying for a significant service expansion of home and community based services
- Excessive cost to the Medicaid program due to over-medicalization of these tasks

COMBATING SAFETY CONCERNS

Concerns have been raised that fully implementing CFC may compromise patient safety. There is a perception that nurses provide a better quality of care than an advanced aide. This belief, however, is unfounded. Not only has nurse delegation been successfully implemented in other states, such as Washington and Oregon, but a decade of research proves that this is a safe, efficient, and economical method of healthcare delivery. Furthermore, in New York, the tasks that an aide would perform through CFC are already being successfully and safely provided by aides through the Consumer Directed Personal Assistance Program (CDPAP). In CFC, qualified nurses would train and delegate tasks to an advanced aides. In addition, nurses would reserve the right to remove a task from the aides' responsibility should the nurse be concerned that the task would not be performed correctly. CFC improves the methods and safety protocols currently used in CDPAP, where the aides are trained by the individual or family member, and not a skilled nurse.

RESOLUTION

We must build on demonstrated experience in other states to amend the NPA under New York State law to allow advanced aides to provide assistance with health related tasks under the direct supervision of a nurse. This would permit broad implementation of CFC. **Statutory changes must be enacted during the current session so that CFC is not unnecessarily delayed any longer.**