30

Testimony of

Consumer Directed Personal Assistance Association of New York State
to:

Senate and Assembly Joint Hearing on Health and Human Services

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Good evening Chairwoman Young and Chairman Farrell, as well as Senator Hannon, Assembly Member Gottfried and all of the Legislators and staff. Thank you for taking time to hear from the Consumer Directed Personal Assistance Association of New York State about the impact of this budget on the nearly 15,000 New Yorkers with disabilities and chronic health needs who have chosen Consumer Directed Personal Assistance (CDPA) as the means through which they will access community-based long term care services such as personal care, home health care and skilled nursing. Our consumers employ approximately 30,000 workers around the state, and our fiscal intermediary agencies are some of the most effective stewards of Medicaid dollars, using on average $0.90 on the dollar to provide direct patient services.

Governor Cuomo's proposed SFY 2016-17 budget, while ambitious in many areas, does not pose much in the way of promise for consumer directed personal assistance (CDPA) or community-based long term care (LTC) in general. In fact, while the Governor and the Department seek to create the Medicaid system of the future, their lack of focus on the present threatens to destroy the ability of most community-based providers, including fiscal intermediaries in CDPA, to bridge the gap and make the transition.

The Governor has proposed a $1.6 billion budget, with $95.9 billion of that coming from state funding. He has proposed major initiatives as a part of this budget, including a provision to invest $700 million to stabilize Thruway tolls until 2020; a $200 million investment in a $20 billion capital plan focusing on upstate and downstate infrastructure; a $120 million investment in the Environmental Protection Fund; $255 million for Upstate Development; $300 million in small business tax breaks; and multi-year projects to rebuild Penn Station and the Javits Center.

However, he has largely ignored the needs of seniors and people with disabilities who rely on Medicaid to stay in their homes and live productive lives in the community. He has completely ignored a program that the Health Department itself contends is critical to the ongoing success of the health care transformation, CDPA. This program, through its lower costs and better outcomes, embodies the Triple Aim and is necessary as we look to revamp our healthcare system. Unfortunately, by ignoring it, the Governor is threatening its very existence.

The minimum wage increase must be funded and funding must be rationalized.

There is little to like about this budget; however, the largest problem with it is the fact that the Governor has proposed dramatic increases to the minimum wage without honoring the State's obligation to fund those increases through the Medicaid program. In 2016 alone, the Governor will propose two unfunded minimum wage increases, totaling $1.75 throughout the State and $3 in New York City.

CDPAANYS is not dismissive of the proposal to raise the minimum wage. We have advocated for years that, to strengthen the ability of consumers to recruit and retain high quality workers, personal assistants in CDPA must make more in wages. However, CDPA is funded exclusively through Medicaid. We cannot raise the cost of a burger or t-shirt to offset this.

These costs are layered on top of a system that has already degraded reimbursement to a point where fiscal intermediaries cannot add one penny to the cost of providing direct services. In an ironic twist, many have commented that they could dramatically increase their reimbursement by doing things such as purchasing company cars or increasing expense accounts; however, as good stewards of taxpayers dollars committed to the services they provide, this is not the course of action they choose.

Fiscal intermediaries (FIs) overseeing the program have the lowest administrative costs in the health care world at 8-12% on average. The fact that the direct care costs are insufficient has led to what is already an all-time low in funding for these organizations, with the average funding being less today than it was in 2006, not adjusting for inflation.

There is no more fat to trim. There are no more efficiencies to find. The failure to fund this minimum wage increase, and adequately fund this program, will cause fiscal intermediaries to go out of business.

CDPAANYS is not worried that one or two FIs will have to close their doors. We are discussing the potential wholesale collapse of an industry. FIs in New York City will be forced to spend approximately $30 million in the first year alone to account for the minimum wage increase, without one penny being reimbursable. Those Upstate, particularly in Central New York and the Southern Tier, are likely to face losses of up to $4 million, equally devastating in terms of overall program size.

CDPA is integral to the State's efforts to achieve the Triple Aim. Delivering high quality services for less money with higher consumer satisfaction, CDPA allows the State to lower costs. It is estimated that the program saved Medicaid over $50 million last year alone. With the number of people utilizing the service increasing dramatically, and the program's impact of lower capitation rates for managed care, that savings is growing exponentially.

This budget undermines all of that by ignoring a simple financial truth, that services cannot be delivered if the money is not there to pay for them. In proposing a minimum wage increase, Governor Cuomo used the name of Franklin Delano Roosevelt. He called on New Yorker's to "...lift up the poor and the working families of this state and pay a real, decent wage that honors FDR's original intent and promise."

The Governor went on to note that the failure to pay a minimum wage that is a living wage amounted to nothing more than a subsidy for employers. He stressed that is costs $6,800 per month in public subsidies to keep a McDonald's or Burger King employee at the current minimum wage. What he fails to note is that the current worker in the Medicaid system who receives a minimum wage because that is what the State's inadequate reimbursement allows also costs the state $6,800 per year in public subsidies.

What he fails to mention is that the accomplishment of his Global Cap and reining in Medicaid growth has come on the back of the working poor, often single mothers. These workers do backbreaking work and cannot afford to put food on the table for their family or heat their home without benefits and subsidies from TANF, HEAP and other social safety nets. In other words, while the Governor decries McDonald's and Burger King for using public benefits to lower their bottom line, his Medicaid program is doing just that.

Again, it is worth stressing that CDPAANYS, our member fiscal intermediaries and the consumers who use this program are committed to working with the Governor and the Legislature to make the minimum wage increase a reality. However, that can only occur if the Governor and the Legislature are equally committed to making sure that the needs of this critical program are met.

Fully fund overtime and travel costs

Last year, Governor Cuomo, acknowledging the distinct differences in CDPA from other traditional services, committed to fully funding the program's costs incurred as a result of new Federal rules that require overtime to be paid at time and a half of base wage, with travel costs paid if a personal assistant works for more than one consumer in a day.

Because consumers, not fiscal intermediaries, are responsible for recruiting, hiring and scheduling their workers, fiscal intermediaries do not have the same ability as most employers to limit these costs. In committing to fund the new rules for CDPA, Governor Cuomo and the Legislature acknowledged this reality.

This year Governor Cuomo is cutting promised funding in half for overtime and travel. Funding the service at the equivalent of $0.34 per hour, the Governor meets between 40-50% of the costs of CDPA, at best. While many FIs have taken steps to encourage consumers to hire more PAs and limit their overtime, the costs associated with the new rules continue and this cut represents yet another attack on this vital program.

Let me be absolutely clear, the appropriation represents a 50% cut in funding for overtime and travel in the CDPA program. A program that in an amicus brief filed with the Federal Court of Appeals for the 3rd District, the Governor said that implementing the rule would not be a problem because it would create substantial annualized savings for every home care worker and the consumers they serve. Totaled the State's amicus estimates Medicaid savings of more than $15,000-$20,000 in savings, per worker. Further, the State acknowledges that the home care industry, including CDPA, saves over $50 billion per year nationally in nursing home costs, savings that will help pay for this overtime.[1]

The State, in acknowledging these savings and the potential impact on individuals' ability to live in the community, acknowledged both the damage the proposed cuts have, both from a financial point of view and from the fact that the State may not be in compliance with its obligations under *Olmstead.*

We ask the Legislature to require that the Department of Health establish, in the short-term, a stop-loss pool to fully fund the cost of overtime, and in the long-term a rate methodologies that allows for the full reimbursement of the costs associated with overtime and travel.

Certification of Fiscal Intermediaries

In the 2015 Legislative Session, the Legislature unanimously passed legislation that would require the Department of Health to license fiscal intermediaries operating the state's consumer directed personal assistance program. The Legislature rightly recognized the importance of this legislation, noting that many agencies were exploiting workers and consumers by running what amount to scofflaw home care agencies and calling them consumer directed services.

Unfortunately, this proposal was vetoed by the Governor on the basis of cost, and despite the fact that every member of the Legislature, the provider organization representing the program, consumers, individual organizations, organized labor and others saw the benefit of it, he did not see fit to include it in his budget.

To be clear, without licensure or certification, the potential for harm to the Medicaid recipient in this instance cannot be overstated. Exemptions from the nurse practice act and the ability of untrained individuals to perform tasks that typically only a personal care aide, home health aide or nurse would be able to perform is based entirely on the notion that self-directing individuals, or their representatives, are directing those services. When this breaks down, and a worker is obliged to respond to the demands of an agency as their employer, not the consumer, than the level of control that allows this program to succeed is compromised.

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[1] Corrected brief for states of New York, Connecticut, Illinois, Iowa, Maryland, Massachusetts, Minnesota and New Mexico as amici curiae in support of appellants, HCAA v Weil, 1:14-cv-00967 (2015), http://phinational.org/sites/phinational.org/files/legislation-regulations/hcavweil-ny-20150227.pdf, accessed on January 22, 2016.

Just this past month, CDPAANYS was made aware of an agency in the Hudson Valley that, operating as a fiscal intermediary, hired a woman to serve as a personal assistant to two different consumers. Despite the program's requirement that these consumers recruit and hire their workers, this woman had never spoken to or met either before she went to work for them. One of the consumers refused to allow her to touch them, yet she was required by the agency to continue going to the home. It was never reported.

Licensure or certification, a brief process that would provide basic oversight of FIs and protection for the consumers who rely on this program to stay in their homes, is necessary to protect the integrity of the Medicaid system as a whole and this important program. The costs associated with this would be nominal, with a large benefit for the state, consumers and workers. We encourage its inclusion in the budget.

Implement Cash and Counseling

As the state and federal government realize that providing more control to consumers results in better outcomes and saves money, the state should examine new ways in which to provide even greater levels of control to consumers. One such idea would be to implement a cash and counseling program in Medicaid.

Cash and counseling is a model that has been proven effective in numerous states, and which currently exists to an extent within the Office of People with Developmental Disabilities. This program would provide consumers with greater oversight over their services by combining their assessment with a formula that would establish a service budget. The consumer would then work with a coordinator to determine how they want that budget allocated, within the confines of Medicaid law and program regulations.

This program has been implemented around the country and would serve as a way in which to address some of the fastest growing costs in consumer directed personal assistance and more traditional forms of home care – namely overtime and travel. It would allow consumers the freedom to determine wage rates for their workers and create the possibility of job growth as individuals could seek to assume new responsibilities with the work with one consumer.

The Department of Health proposed a program similar to this several years ago; however, at the time CDPA was struggling and ultimately the Legislature chose to promote this program instead. Now, with CDPA growing at an annual rate of approximately 20%, it is time to once again examine this option.

Nursing home level of care for Managed Long Term Care

While we are reserving full comment on the proposal to limit enrollment of non-nursing home eligible individuals in managed long term care, CDPAANYS has concerns and questions about this budgetary proposal. We see a large potential to create an access issue with this proposal, as Local District Social Services offices have been dismantled or dramatically downsized as a result of mandatory managed long term care. Requiring counties to rebuild or restaff these offices is a dramatic change of course that has potentially devastating consequences for consumers. Therefore, we encourage this proposal be excluded from the final budget.

As the Department seeks to rationalize costs within managed long term care, CDPAANYS reiterates its belief that **the creation of a high needs rate cell** would be a more appropriate mechanism to do so. A high needs rate cell would create capitation rates that more accurately reflect the costs of delivering services to a particular population, and eliminate the ability of plans to profit through the continued enrollment of a large number of relatively low-risk individuals. The fact that the Department views this as enough of a problem to undermine their managed care for all philosophy demonstrates that their insistence over the past several years that separate rate cells are not necessary is flawed, at best.

Early Intervention Prompt-pay guidelines

While CDPAANYS does not maintain an opinion on most of the early intervention proposals, we did note with interest the proposal that would require insurers to provide providers in the early intervention program with notice of deficiencies in bills within fifteen days, instead of the traditional thirty.

CDPAANYS strongly endorses this idea; however, we feel it should be applied to all providers. Since our inclusion in managed care, fiscal intermediaries have repeatedly fallen victim to a few "bad apple" plans that use artificial deficiencies to delay payment. While many plans pay claims quickly, and therefore are not affected by this proposal, those who seek to manipulate the system will return claims repeatedly for faults and deficiencies that do not exist.

By extending this proposal to all providers, the Legislature will stabilize providers by ending plans' ability to manipulate the prompt pay system, forcing them to pay in a timely manner as the Legislature intended.

Thank you very much for your time and I welcome any questions.