Testimony of

Consumer Directed Personal Assistance Association of New York State

to:

Joint Public Hearing on Nursing Home, Assisted Living, and Homecare Workforce

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Good afternoon Chairs May, Rivera, and Ramos, and all the Senators here today. Thank you for holding this hearing on an extremely critical matter to both health and labor and for inviting me to speak on behalf of the Consumer Directed Personal Assistance Association of New York State (CDPAANYS). CDPAANYS is a statewide association that seeks to improve access to and the quality of the state's consumer directed personal assistance program for the fiscal intermediaries (FIs) who perform the administrative duties necessary for the program's success and the more than 140,000 seniors and people with disabilities who are consumers that rely on CDPA to live active lives at home and in their communities.

The workforce crisis prevents a shift in service delivery

These hearings are an important continuation of the Senate's critical leadership on these issues. New York is the epicenter of a national home care workforce crisis. In 2016, Mercer Consulting predicted a shortage of 50,000 home care workers in New York by 2023[1]. Their most recent report projects that shortage to be greater than 83,000 workers by 2025[2].

The real world impact of these shortages is readily apparent. Counties throughout the State do not have home care workers available. Consumers in CDPA go without needed services because they cannot hire enough staff, or retain those they do hire. Authorizations are reduced not because of a lack of need for services; but because plans and agencies know that hours cannot be filled. In Albany County, there is a waiting list of over 100 people for fee-for-service home care services. In many counties, agencies and plans no longer even pretend that Medicaid recipients have a choice of home care, referring people directly to CDPA, whether they want it or not.

CDPAANYS has chronicled the home care workforce crisis since 2017 when we released our first report on the issue, *The High Cost of Low Wages*. Based on surveys of consumers using CDPA, the report found that all respondents placed "help wanted" advertisements, a cost they incur out of pocket, at least once or twice per year. More than half reported it took an average of between one to six months from the date of advertisement placement to date of hire. The constant churn of hiring and losing workers was a universal experience, with 56% of these consumers citing low pay as the reason their PA quit. Our follow-up report in 2020 found recruitment effort rates among consumers were virtually unchanged and inadequate wages as the most common reason workers quit.

In anticipation of the July 1 fast-food minimum wage increase Upstate, CDPAANYS published an issue brief that detailed the extent of the problem, as well as what we can expect for an impact of various solutions. Nearly 90% of workers upstate earn less than the fast-food minimum wage, with two out of three earning minimum wage. 70% of consumers cite low wages as the reason their PAs quit, and almost half of the PAs in the region have warned their consumers that they plan to leave in the near future for higher-paying jobs in fast-food.

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[1] Narlock, J., PhD, & Stevenson, M., PhD. (2016). Healthcare Workforce 2025 Part II (Rep.). Mercer.
[2] Stevenson, M. (2018). Demand for Healthcare Workers Will Outpace Supply by 2025: An Analysis of the US Healthcare Labor Market (Rep.). Mercer.

The cost of this, both human and fiscal, is real. Whether it is getting out of bed in the morning, helping with toileting, or round-the-clock maintenance of a tracheostomy tube, these services are essential to people living in and being active members of their home, workforce, and community. When seniors and disabled New Yorkers are forced to go without these critical services, their conditions further degrade until they require even more community-based services, services they still cannot fill, or institutionalization.

What we also now know is that the Department of Health (DOH) is actively aware of the shortage of workers and resulting lack of services, but has failed to take meaningful action to address it. In fact, their recent language indicates that they may have intentionally exacerbated it to minimize the growth of long-term care services among those who are otherwise eligible. Indeed, in an application to the Federal Centers for Medicare and Medicaid Services (CMS), the DOH stated that they should be allowed to use $415 million in increased federal matching funds to pay for the "natural growth" of CDPA and personal care because, "While the growth rate of these programs has remained high, structural factors—such as workforce capacity limitations—have served to limit growth. However, by permitting New York to address many of these structural factors and promote the capacity and accessibility of HBCS...funding under...ARPA will work to create natural growth in PCS and CDPAS based on pertinent minimum needs criteria."

When taken in combination with the larger proposal, this argument and acknowledgment of the problem indicates that DOH has failed to address the problem of workforce shortages because they knew it would allow Medicaid recipients who otherwise qualify for home care to use the benefits for which they are eligible. If we are to reimagine our long-term care system and learn the lessons of COVID-19, as well as meet our basic obligations under the *Olmstead* mandate, we must acknowledge this as intolerable.

A problem created by a decade of disinvestment

The primary reason the state is facing a critical workforce shortage, and therefore lack of access, is obvious to anyone who chooses to see it. Jobs that once provided a pathway to the middle class at approximately 150% of the minimum wage for a workforce predominantly composed of women, a majority of which are women of color and immigrants, now often pay $2.50 less per hour upstate and $1.00 less per hour in Westchester and Long Island than the legally required wages for fast food. Poverty-level wages that are usually the lowest in any community are not enough to attract workers to a job that, while extremely rewarding, requires complicated and physically taxing work and knowledge of a complex set of skills.

These low wages are the result of an overall disinvestment in home care services. Medicaid reimbursement rates have stagnated for more than a decade. The elimination of adjustments for inflation for over a decade means that fee-for-service reimburses below cost. Meanwhile, managed long-term care and mainstream managed care operate with opaqueness and

impunity, cutting rates to providers to bare-bones levels and insisting that the rates work - if those providers pay the workers minimum wage and refuse to allow any overtime.

Within CDPA, the $150 million in cuts to administrative services for the agencies has further complicated this disinvestment. The creation of the per member, per month reimbursement rate, with no distinction between whether a fiscal intermediary is operating in Rome, NY or New York City, and the inherent cost differences that go with that, has meant FIs are forced to make difficult decisions about how they administer consumer's services. This is particularly true within managed care, where administrative services and direct care services were never distinguished, allowing fiscal intermediaries to utilize what might otherwise be "administrative" revenues in fee-for-service for higher wages and/or overtime.

All of these cuts and disinvestment have had one outcome - they have rendered PA raises unfeasible and eliminated the majority of overtime opportunities. The workers who have remained are often on Medicaid and other public benefits themselves. Burnout is at all-time highs, leading to high turnover. Fewer and fewer new workers enter the profession to replace them.

Large problems require comprehensive solutions

To address the crisis we face as a state, New York must commit to a strong investment in the home care system. That investment must drive higher reimbursement to providers so that they can provide the needed services to support workers and consumers and provide higher wages to workers. The mechanism to do this has been identified in legislation introduced by Senator May and Assembly Member Gottfried, known as Fair Pay for Home Care.

Fair Pay for Home Care invests in the home care industry, restoring the wage level of this workforce to a new legal standard of 150% of the minimum wage, or $22.50/hr. By creating a minimum wage for the home care industry that is indexed to the overall minimum wage, Fair Pay for Home Care not only solves the workforce crisis of today, it prevents similar crises in the future.

Notably, CDPAANYS' issue brief identified that other proposals that increase training, benefits, or provide alternative benefits such as transportation, will not address the issue as effectively as Fair Pay for Home Care. Accordingly, nine out of every ten consumers Upstate identified that a $1/hour increase in wages would be more effective at helping them recruit and retain PAs than increases in benefits or the provision of transportation or training. Four out of five of consumers in Long Island and Westchester responded in kind.

But Fair Pay for Home Care is an important investment not merely in the home care workforce. It also invests in the provider community, ensuring that both FIs and LHCSAs have the resources to pay for these higher wages. By utilizing cost reports and other data already filed by providers with the Department of Health, Fair Pay for Home Care establishes a minimum rate of reimbursement based on an average of actual costs in a region. The Department of Health, and

managed care plans, must reimburse FIs and LHCSAs at least this minimum rate, adding a new level of transparency to the process that will prevent the underfunding of services and eliminate the flawed incentive of plans reimbursing providers more or less based on the number of new members the provider can provide to the plan.

The bill goes on to assure that new requirements for overtime that were put into place by the DOH are funded, allowing FIs to bill an overtime rate if they are not allowed to prevent workers from working these hours. It also factors in compression of wages, making sure that the workforce crisis does not merely shift to a different spot within the agency by ensuring that supervising nurses and others receive increases in wages as well.

Finally, providers are assured that these costs will be maintained from year to year, as the Department of Health is required to analyze the impact not only in year one but every year from there. The data will result in an updated minimum rate of reimbursement each year so that the reimbursement offered continues to factor in inflation in the cost of providing services, including in benefits, taxes, and infrastructure.

The state has failed to invest in home care for over a decade, and the results are unmistakable. The DOH has proposed to use an increase in Federal matching funds meant to expand access to community-based services to instead pay for the services they are already legally required to provide, even directing millions to nursing homes.

To solve the crisis this disinvestment and intentional cuts have created, we must have a meaningful and significant investment in home care services. Fair Pay for Home Care is the catalyst New York needs to reshape its long-term care system and prioritize community-based supports. By investing in the entire system, the bill increases and stabilizes reimbursement for providers while guaranteeing that it means higher wages for workers. These wage increases will expand access to community-based supports, improving services and the overall economy of New York.

Thank you for your attention to this critical issue.