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Testimony of The Legal Aid Society
Joint Public Hearing: Consumer Directed Personal Assistance Program (CDPAP)
Senate Committee on Health; Senate Committee on Investigations and Government Operations

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Thank you to Senator Rivera, Senator Skoufis, and the members of the Health Committee and the Investigations and Government Operations Committee for holding this hearing today, and for the opportunity to provide testimony on this critical topic.

The Legal Aid Society is a private, not-for-profit legal services organization, the oldest and largest in the nation, dedicated since 1876 to providing quality legal representation to low-income New Yorkers. It is dedicated to one simple but powerful belief: that no New Yorker should be denied access to justice because of poverty. The Legal Aid Society's Civil Practice provides comprehensive legal assistance on a vast array of legal matters. The diversity of our practice areas demands an intersectional approach that responds to the needs of all our client communities without pitting vulnerable communities against each other. Most relevant to our testimony today are our Health Law and Employment Law practices, where we represent many consumers who participate in the CDPAP program, as well as a proposed class of personal assistants who provide them care.

CDPAP is an essential program for our clients: it provides consumers flexibility and independence in arranging their homecare, while providing gainful employment to personal assistants, many of whom care for family members, friends, or neighbors. New York State's consolidation of CDPAP fiscal intermediary services under Public Partnerships, LLC ("PPL") has been a disaster. Today, over four months after the transition, consumers are still experiencing interruptions in their services, personal assistants are paid late or less than they are owed, and both populations have endured significant stress and uncertainty while navigating the transition. PPL additionally continues to deny personal assistants compensation owed under the Wage Parity Act by offering a flimsy slate of benefits which are of little to no value, and in many cases leave personal assistants worse off by limiting their eligibility for New York State of Health's robust Essential Plan.

The Faulty Transition to a Single Fiscal Intermediary Harmed CDPAP Consumers.

New York's transition to a Single Fiscal Intermediary for CDPAP was shortsighted, irresponsible, and dangerous. The Legal Aid Society was among the chorus of advocates pushing for delays and changes to the implementation schedule, as well as those frustrated by the lack of any response from the Department of Health ("DOH" or "Department") acknowledging and

addressing the unprecedented challenges of the transition or PPL's history of payroll mismanagement in other states.[1]

When the Department issued guidance on December 6, 2024 that established a transition period of less than four months, with consumers in New York City not receiving notices until February, advocates raised concerns about what would happen to New Yorkers who could not enroll before the April 1 deadline. The Department failed to answer this question. It provided vague promises that it was working on the issue and focusing on outreach. Advocates were not alone in failing to get these essential questions addressed. In February, at the Health Budget hearing, Senator Rivera and others asked these same questions about the backup plan for those who couldn't sign up in time. The Department still did not offer any specifics about a backup plan other than stating that it was health plans' responsibility to be accountable to their members and would make sure that members received care and workers were paid.

The Department assured advocates that anyone who wanted to be enrolled by April 1 would be enrolled. This proved to be inaccurate. When confronted with this failure, the Department intentionally placed blame on consumers and personal assistants. The transition was doomed to failure both by the Department's refusal to take even basic steps to protect consumers and its refusal to ensure PPL would properly administer wages to prevent wage theft, despite repeated warnings from advocates as to both issues. At no point did DOH provide information about any notices that clients would receive before their services ended, a clear due process violation.

The DOH narrative that any concerns raised about the transition were propaganda spread by those with a financial stake in the transition was disheartening and insulting. Rather than engaging with and addressing the good faith efforts of advocates to raise legitimate concerns about the due process rights of our clients, the Department dismissed concerns as the April 1 deadline approached. Advocates raised questions in an effort to work collaboratively with DOH to make the transition better. The Department failed to engage with the advocate community and therefore did not address concerns before they caused vulnerable New Yorkers harm.

The Legal Aid Society's clients – both consumers and personal assistants – did face and continue to face widespread problems throughout the transition: inability to get through to PPL, computer systems that provided incomplete or inaccurate information (if they functioned at all), lack of language access, lack of disability accommodations, and continuous misinformation. We have spoken to consumers and family members who have spent dozens of hours or more unsuccessfully trying to navigate the PPL system. The transition to PPL has harmed our clients and caused a tremendous amount of stress and uncertainty.

One of the Health Law Unit's long-time clients, who is tech-savvy and a very effective advocate for himself, unsuccessfully tried to reach PPL and complete the transition for weeks before the April 1 deadline. Coincidentally, he has a relative who works for DOH who was one of the staff deputized to work overtime to help with the transition. Only after our client's relative got involved did his transition move forward.

[1] *See, e.g.*, Medicaid Matters New York letter to Commissioner James McDonald, Mar. 13, 2025, https://medicaidmattersny.org/wp-content/uploads/2025/03/MMNY-2nd-CDPAP-letter-3.13.25.pdf.

The Department's announcement of a "late registration window" only days before the April 1 deadline was insufficient to account for the widespread problems with the transition—and it also anticipated what would be clear violations of New York Labor Law. The late registration window contemplated an unlawful scheme under which personal assistants would continue to work for their consumers but would only be paid retroactively once the registration process was completed – if it was completed by the end of April. In reality, the New York Labor Law requires weekly payments to ensure that personal assistants and other "manual laborers" can pay their bills and make ends meet.

As disastrous as the process continues to be, we are grateful to the New York Legal Assistance Group and Patterson Belknap for filing the *Engesser et al. v. McDonald* lawsuit and protecting consumers who, through no fault of their own, were unable to complete their enrollment.

PPL's Ongoing Failure to Pay Personal Assistants

The systemic failures of PPL's faulty payroll and timekeeping system has led to widespread wage theft from personal assistants. Four CDPAP personal assistants, represented by Legal Aid and the law firm Katz Banks Kumin LLP, filed a class action against PPL in federal court. In *Calderon v. Public Partnerships, LLC*, 25-cv-02320, our clients Philip Calderon, Dana Folgar, Alison Fields, and Farshad Pinchasi are suing PPL, on behalf of themselves and all other similarly-situated personal assistants in New York City, Westchester, Nassau, and Suffolk Counties. As the Plaintiffs' First Amended Complaint in *Calderon* filed in the U.S. District Court for the Eastern District of New York sets forth in detail, PPL's faulty payroll and timekeeping system has resulted in widespread failure to pay personal assistants on time, for all their hours worked, at the correct rate.[2] While these problems began during the initial transition to PPL as the statewide fiscal intermediary they persist even months later.

Since PPL assumed its role as employer and fiscal intermediary on April 1, 2025, personal assistants and consumers have reported catastrophic systemic failures in PPL's enrollment, payroll, timekeeping, and communications infrastructure, requiring hours on the phone in efforts to remedy countless errors. As a result, we allege that PPL has subjected tens of thousands of personal assistants to wage theft, leaving them uncompensated or undercompensated for weeks. Under PPL's system, personal assistants are required to report their hours to PPL either through Time4Care, an application, Telephony, an automated phone system, or PPL@Home, an online portal. Consumers (or their designated representatives) must approve their personal assistants' hours before PPL releases payment.

As set forth in the *Calderon* complaint, the flaws in these systems are profound. The following are just some of the problems reported by personal assistants and consumers:

- The Time4Care application is unreliable. Personal assistants are often unable to log into the application despite repeated attempts or find that their time entries have not been saved or recorded accurately. All four of the *Calderon* plaintiffs have at times been unable to use Time4Care.

[2] *See* First Amended Complaint, *Calderon v. Public Partnerships LLC*, 25-cv-2320, Doc. No. 10 (FBE)(LKE) (E.D.N.Y. May 28, 2025), https://legalaidnyc.org/wp-content/uploads/2025/05/10-First-Am.-Compl.pdf.

- Similar problems exist with the Telephony system. Some personal assistants have stopped using Telephony altogether because it misstated their hours worked. PPL@Home also produces incorrect results.
- Time4Care and Telephony will not accommodate overlapping work shifts. When two personal assistants overlap on the clock even for just a few minutes, either because a consumer is authorized to receive care from two personal assistants simultaneously or because of a shift change requiring that the assistants communicate information to one another, both personal assistants have had their entire shifts rejected by PPL.
- PPL's Telephony and Time4Care systems reject time entries that span the time period from 11:59 P.M. to after midnight, requiring personal assistants to clock-out at 11:59 and clock back in at 12:00. If a personal assistant does not clock out at 11:59 or does not take subsequent steps to edit their time entries, PPL pays them nothing for the whole shift that includes the time from just before to just after midnight.
- Consumers have found that PPL undercounts their personal assistants' hours or lists the wrong personal assistant in the Consumer's portal (including confidential information such as the personal assistant's complete social security number)
- Though CDPAP allows consumers to appoint designated representatives to manage their personal assistants, designated representatives have reported that PPL does not allow them to approve pay for personal assistants, either through Time4Care or Telephony.
- Other consumers have found that they cannot approve time at all because PPL has incorrectly marked them as lacking Medicaid authorization for CDPAP care services or failed to process authorizations submitted by social services agencies and insurance providers.

Personal assistants and consumers have made repeated efforts to directly bring these issues to PPL's attention to no avail. They spend hours searching for workarounds in attempts to navigate an impenetrable process. Getting through to a PPL representative by phone has proven to be exceedingly difficult. Many English-speaking consumers and personal assistants now select foreign language options when calling PPL because they have learned that this workaround increases the likelihood of reaching a person before the line disconnects. When they have been able to leave a call back number, personal assistants and consumers have waited weeks for the promised return call. Often, no call ever comes. Even when personal assistants and consumers can reach a person at PPL, their problems remain unresolved. The result is that personal assistants have gone unpaid or underpaid for weeks at a time.

Personal Assistants cannot afford to receive their wages late. Several of the Plaintiffs in the *Calderon* case had to rely on savings or credit to meet basic expenses after PPL failed to pay them properly. Other personal assistants across the state may not even have access to these resources and thus be unable to pay their rent or put food on the table when they do not receive their pay. While personal assistants are committed to their work, some cannot afford to continue caring for their consumers in the absence of prompt, complete payment. Continued mismanagement of personal assistant pay raises the risk that consumers will experience interruptions in their care plans or be unable to find personal assistants to employ.

In addition, it appears that PPL is assuming roles that have not been allocated to it by statute and contract, such as trying to limit overtime. Specifically, PPL has sent "excessive overtime

warnings" through repeated intimidating email messages and phone calls to some personal assistants who are working overtime hours. While claiming to be concerned about the well-being of the personal assistants and the consumers, these communications appear to be attempting to deter personal assistants from working – or reporting – overtime hours, even when such hours have been medically authorized for their patients. State law is clear that the fiscal intermediary's role is to process pay and benefits and that the recruiting, hiring, and supervision of personal assistants is left to the consumers or their designated representatives. PPL's contract with DOH expressly prohibits it from limiting overtime hours. But under the guise of concern for consumers and workers, PPL is trying to do just that. Far from trying to protect consumers or personal assistants, PPL is overreaching beyond its statutory and contractual role to protect its bottom line.

PPL's Benefits Scam

The Wage Parity Act protects homecare workers in New York by guaranteeing them a minimum standard of compensation above the State's basic minimum wage, including a benefits supplement which may be paid either in cash or equivalent value in benefits. Unfortunately, as the Plaintiffs in *Calderon* have alleged in their First Amended Complaint, PPL is violating both the New York Labor Law and the Wage Parity Act by allocating personal assistants' supplemental benefit pay to benefits of little or no value to them. PPL's benefits offerings in fact leave many personal assistants worse off than if PPL had just paid the supplemental benefit pay in cash, since eligibility for PPL's benefits can limit personal assistants' access to New York's robust Essential Plan. Making matters worse, public reporting has indicated that PPL and its benefits administrator, Leading Edge Administrators, will reap financial gains through underuse of their shoddy benefits offerings.[3]

Under the Wage Parity Act, Homecare Workers are entitled to a cash wage of $19.10 per hour, plus either $2.54 (in New York City) or $1.67 (in Long Island and Westchester) per hour in supplemental benefit pay. PPL allocates around $.67 per hour of workers' supplemental benefit pay towards PTO accrual for sick time and vacation. PPL then allocates $.87 per hour from New York City workers and $.62 per hour from Westchester and Long Island Workers to its "Wellness" and "Flex Benefit" plans. While PPL does not provide this information on personal assistants' paystubs, it appears the Wellness Plan accounts for $.40 of this allocation and the Flex Benefits either $.47 or $.22 per hour, depending on the area.

The Wellness Plan is worth significantly less to personal assistants than $.40 cents per hour and provides only scant benefits. While the Wellness Plan purports to be health insurance, it does not cover *any* medical treatment beyond minimal preventive care. The Wellness Plan meets the lowest standard set by the Affordable Care Act, providing only "minimum essential coverage," including an annual physical and coverage for certain common prescription drugs. For personal assistants with existing health insurance, the deductions or charges for the Wellness Plan offer no benefit. Even for those without any other health coverage, available evidence indicates that PPL significantly overcharges workers for meagre Wellness Plan benefits, since the plan does not cover serious or chronic illnesses, which make up the largest share of costs covered by a normal

[3] Sam Mellins, *New York's Health Companies Could Pocket Millions Meant for Low-Wage Care Aides*, New York Focus, July 21, 2025, https://nysfocus.com/2025/07/21/new-york-leading-edge-flex-pay-cdpap.

health plan. PPL has bundled the Wellness Plan with bare-bones indemnity plans for accidents and critical illness, but even together only a vanishing minority of personal assistants will ever receive the allocated $.40 per hour in value. PPL has provided no accounting for the three plans. Since the Wellness Plan is self-funded, and the other two insurance plans may be as well, at least some of the money PPL is claiming to use for benefits is going back to PPL in violation of the New York Labor Law and the Wage Parity Act.

The Flex Benefit Plan is of similarly little value to homecare workers. Under the Flex Benefit Plan, personal assistants receive a debit card with which to make certain pre-tax purchases. The central component of the Flex Benefit Plan is an Excepted Benefit Health Reimbursement Arrangement ("EBHRA"), which allows for use of pre-tax dollars to cover eligible medical expenses such as copays, deductibles, or dental and vision insurance premiums. The Internal Revenue Service requires that an EBHRA be funded solely by employer contributions, but PPL effectively funds the Flex Benefit Plan with employee contributions by using Wage Parity funds, which would otherwise be paid out as wages. PPL appears to have also attached strings to money allocated to the Flex Benefit Plan, at times indicating that unused funds would revert to it, in violation of the New York Labor Law and the Wage Parity Act.

What is particularly shocking is that, as the *Calderon* Plaintiffs allege, while PPL began allocating Wage Parity Money to the Wellness Plan and the Flex Benefit Plan as of April 1, personal assistants did not receive <u>any</u> benefits cards – or access to those benefits – for at least two months after the transition. And as a recent News10NBC report showed, caregivers who have been trying to access coverage using the cards PPL finally provided have been unable to do so.[4]

Even PPL's PTO program runs afoul of the Wage Parity Act. Personal assistants accrue PTO at the minimum rate required for accrual of safe and sick time under state and city law. In effect, PPL is counting sick time it is legally required to pay workers as a credit against the minimum total compensation required by the Wage Parity Act. As the *Calderon* Plaintiffs allege, this practice violates the Wage Parity Act and New York Labor Law.

The Wellness Plan, Flex Benefits Plan, and PTO program are all mandatory for homecare workers. However, PPL also offers an opt-in health benefit to certain workers which threatens to leave them worse off than if PPL offered no benefits at all. Personal assistants who work more than 130 hours in a month are eligible for an Affordable Care Act "minimum value" plan, called PPL Anthem SecureHealth. Plan documents indicate that the SecureHealth plan provides benefits only after an aide meets a *$6,350* individual deductible, or *$12,700* for a family. While this plan is optional, its very existence means that personal assistants will lose access to the affordable and reliable Essential Plan available through New York State of Health. The Essential Plan has been a consistent success and a source of pride for New York State. It is affordable coverage that recognizes that many working individuals in New York, whose income is too high for Medicaid, still cannot afford subsidized Qualified Health Plans ("QHPs") and do not receive

[4] Jennifer Lewke, *News10 NBC Investigates: Caregivers Face Uphill Battle Getting Health Insurance Through State's New CDPAP Program,* News10 NBC, July 11, 2025, *https*://www.whec.com/top-news/news10nbc-investigates-caregivers-face-uphill-battle-getting-health-insurance-through-states-new-ppl-program/

comprehensive insurance from work. However, individuals are not eligible for the Essential Plan if their employer offers health insurance, even if that insurance is significantly worse.

DOH has provided inconsistent and confusing information regarding the impact of PPL health insurance on the comprehensive health insurance that many personal assistants currently have, particularly the Essential Plan. When the details of PPL health insurance started to emerge, DOH responded to criticism by stating that personal assistants would be in a better position because many of the prior FIs did not offer health insurance. Given the quality and widespread use of the Essential Plan by personal assistants in the old system, this statement by DOH was disingenuous and misleading. Because DOH did not take steps to protect access to the Essential Plan, some workers are now in the impossible position of having to decide whether to continue doing physically demanding work without access to quality health care or to leave jobs caring for New Yorkers with disabilities, including their own friends or family.

In sum, personal assistants would be better off if PPL simply paid them the full Wage Parity Act compensation to them—meaning the supplemental pay that the *Calderon* Plaintiffs allege PPL has been unlawfully diverting to these supposed benefits—as additional wages, thus allowing personal assistants to seek other benefits.

Conclusion and Recommendations

As the *Calderon* Plaintiffs have alleged, PPL has failed in many of its basic responsibilities as New York's statewide CDPAP fiscal intermediary, engaging in widespread violations of the New York Labor Law and Wage Parity Act. We recommend New York act swiftly to hold PPL accountable and consider appropriate steps to protect the rights of consumers and personal assistants and repair the damage done to CDPAP.

Most importantly, in this process, consumers, personal assistants, and other stakeholders must have meaningful input into the future of CDPAP.