



**Testimony of United Neighborhood Houses
Before the New York City Council Committee on Aging
Council Member Margaret Chin, Chair**

Oversight – Home Care and Caregiving Strategy

**Submitted by Tara Klein, Senior Policy Analyst
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Thank you for hosting today’s important hearing on home care and caregiving strategy in New York. United Neighborhood Houses (UNH) is a policy and social change organization representing 45 neighborhood settlement houses, including 40 in New York City, that reach over 765,000 New Yorkers from all walks of life. A progressive leader for more than 100 years, UNH is stewarding a new era for New York’s settlement house movement. We mobilize our members and their communities to advocate for good public policies and promote strong organizations and practices that keep neighborhoods resilient and thriving for all New Yorkers.

This testimony will focus on the home care workforce and the economic crisis facing nonprofit home care providers due to New York State funding and policies that perpetuate near-poverty wages. While the State plays the largest role in regulating and funding this sector, New York City also has a direct role in some cases and can support efforts to strengthen the overall sector. New York City and State must take urgent action to stabilize the home care sector and fairly compensate its workforce.

Settlement Houses

Three UNH member organizations provide nonprofit home care services to their communities as state licensed home care services agencies (LHCSAs): Chinese-American Planning Council, St. Nicks Alliance, and Sunnyside Community Services. Together, every year these settlement houses provide services to over 4,500 individuals with nearly 7,500 workers throughout New York. While the home care industry is comprised of both for-profit and nonprofit home care agencies, these community-based organizations serve distinct roles. They serve their neighborhoods with culturally competent care and offer many important wrap-around services and programs beyond home care including early childhood education, youth development programs, adult literacy classes, senior centers and more.

As multi-service nonprofits, these programs operate on lean budgets and struggle to maintain fair home care wages given reimbursement rates and State policies. For years, these organizations have been advocating together on behalf of the sector, ensuring the State does not

pit home care workers and employers against one another and instead reform unfair State funding and policies.

Importance of Home Care

According to federal studies and modeling, over half (52%) of Americans turning 65 today will develop a condition serious enough to require long-term services and supports.¹ There are also over a million New York State residents with disabilities, chronic illnesses, or other complications that require direct long-term care. With such a significant population of New Yorkers that will require long-term care to age with dignity, it is in our government's best interest to ensure these services are as appropriate and sustainable as possible.

Direct care in homes and communities is either provided by unpaid family caregivers, paid family caregivers, or home health workers through an agency. New York's home care employees work tirelessly to help older adults and people with disabilities and chronic illnesses who require assistance with daily activities. Home care allows vulnerable community members to remain living at home with dignity and high-quality individualized care, which the vast majority of individuals prefer over being sent to institutionalized settings such as nursing homes. Further, many immigrant seniors and families prefer home care because they can receive language-accessible and culturally competent care that they would not find in institutionalized settings.

With the demand for home care increasing, and with the nursing home crisis in New York that escalated during the COVID-19 pandemic, it is clear that the home care model should be preserved and elevated if New York is to remain dedicated to healthy aging and keeping older adults in their homes and communities.

Industrywide Workforce Challenges

As the State's population continues to age, the need for long-term care is growing rapidly. Statewide projections show² that the number of New Yorkers age 65 and over is expected to grow by nearly one million from 2016 to 2026, and by another half a million from 2026 to 2036 – to about 4.5 million by 2036. As the population grows, the need for long-term care and the long-term care workforce will also grow.

The home care sector currently employs hundreds of thousands of people in New York, and by 2025 the sector is expected to see a 33% growth in demand and a net workforce shortage of 23,000 workers.³ This shortage is in large part due to a systematically underpaid workforce comprised largely of women of color and immigrants. Home care workers had a median pay of \$28,750 in 2020,⁴ with an estimated one in four workers living below the Federal poverty line, making them some of the most economically disadvantaged employees in the State.

These poor wages are predominantly due to State policies including low Medicaid and MLTC reimbursement rates and the NYS Department of Labor's "13 hour rule" of 13 hours of pay for a

¹ <https://aspe.hhs.gov/basic-report/long-term-services-and-supports-older-americans-risks-and-financing-research-brief>

² <https://pad.human.cornell.edu/counties/projections.cfm>

³ www.mercer.us/our-thinking/career/us-healthcare-labor-market-interactive-map.html

⁴ <https://dol.ny.gov/labor-data#31-0000>.

24 hour work shift. Nonprofit home care providers in particular are stymied by these policies, unable to pay the fair wages they know their workers deserve due to a lack of funds. These economic policies were especially insulting as the home care workforce and providers navigated the COVID-19 pandemic, continuing to provide services despite fearful workers and clients and rapidly-changing state guidance.

Medicaid Challenges

Home care is funded substantially by government payors, with the State's Medicaid program representing 87% of home care and personal care services,⁵ including through managed long-term care plans (MLTCs). Exacerbating the sector's low wages are depressed Medicaid reimbursement rates. Particularly for nonprofit providers, home care agencies are beholden to the rates and requirements laid out by Medicaid and the State, making it extremely difficult for providers to compensate their workers adequately or competitively when faced with unfunded regulatory mandates.

Medicaid itself is a significantly underfunded State program, with many health care services competing for limited funds that under State rules are only permitted to grow by a certain percentage tied to the medical inflation rate each year under the Global Cap. Further, as mass unemployment swept our State throughout COVID-19 and people were forced to give up their employer-sponsored healthcare, hundreds of thousands more people enrolled in Medicaid⁶, putting even more strain on the system. Finally, before COVID-19 hit in early 2020, former Governor Cuomo tapped a second Medicaid Redesign Team (MRT II) to propose additional cuts to the Medicaid program to save money. This included a 1% across-the-board cut to home care agencies that went into effect in the FY 2020-21 budget, which was especially painful for nonprofit providers.

The 13-hour rule

The New York State Department of Labor (DOL) has established that residential home care employees who work for 24 hours shifts can only be paid for 13 of those hours in most cases, with the remaining hours exempt and intended to be reserved for sleep (8 hours, 5 of which must be uninterrupted) and meals (3 hours). In practice, many 24-hour shift workers are frequently interrupted by their patients' various needs, with work stretching throughout the night and rarely affording real meal or sleep breaks. An employee can be paid for 24 hours of a 24-hour shift if the employee can demonstrate they received less than 5 hours of uninterrupted sleep. In practice, however, these additional hours can be difficult for employees to quantify, and it can be difficult for providers to obtain additional reimbursement from their insurance plans.

This "13-hour rule" also sets Medicaid reimbursement rates, so providers who want to pay workers fairly for the full 24 hours must find 11 hours of pay in their own budgets. For many home care providers, especially those that are nonprofit organizations on lean budgets, this is impossible. This means that employees often end up doing more than 13 hours of work for only 13 hours of pay. While less than 10% of home care workers currently work 24-hour shifts (at least in UNH's network), the 13-hour rule remains a leading contributor to the poor pay scales for 24-hour home care workers.

⁵ <https://hca-nys.org/wp-content/uploads/2019/02/HCA-Financial-Condition-Report-2019.pdf>

⁶ <https://medicaidmattersny.org/wp-content/uploads/2021/04/global-cap-MMNY-statement-4.6.21.pdf>

Recommendations

UNH offers the following policy recommendations to stabilize and strengthen the home care workforce while ensuring nonprofit providers are able to remain financially viable. These solutions all require some financial investment, in most cases by the State. Home care workers are currently forced to accept dire wages because of State regulations; it is therefore the State's responsibility to cover these costs and rectify a system it has neglected for decades, to the detriment of workers. We hope the City will help advocate for these reforms and support local efforts to bolster the home care sector:

Support Fair Pay for Home Care (State bill S.5374/A.6329)

UNH supports S.5374 (May) / A.6329 (Gottfried), the Fair Pay for Home Care bill, which would ensure home care workers are paid uniform and fair wages across the State. This bill would establish a base wage for home care workers at 150% of the regional minimum wage, whether that wage is set by statute or a wage order, and requires annual adjustments via the Department of Health. Critically, the bill includes a funding mechanism by establishing the Fair Pay for Home Care Fund and subsidizing Medicaid payment rates when necessary. This will ensure pay rates are funded through reimbursement rates and do not unfairly fall on providers.

This bill will not be feasible without a financial commitment, which likely includes an adjustment to the Medicaid Global Cap. However, the bill is ultimately an economic development program. A recent report from the CUNY School of Labor and Urban Studies found that this legislation would create 20,000 additional home care jobs per year for the next decade, create nearly 18,000 new jobs within local businesses due to the increased spending capacity of these home care workers, and result in net economic gain of billions of dollars for the State.⁷

Support City Council Resolution 1784-A and Split Shifts bill (State bill S.359/A.3145A)

UNH supports S.359 (Persaud) and A.3145A (Epstein) (not currently same-as), which would cap home care worker shift hours at 12 hours in most cases (informally known as split shifts), and City Council Resolution 1784-A in support of this legislation. This bill seeks to rectify the unfair pay structures that result from the Department of Labor's 13-hour rule by capping the number of hours an employer can require a home care worker to work at 12 hours, with a cumulative limit of 50 hours of work per week (shorter shifts would also be permissible, such as 8 hours). There are limited exceptions to go over this cap, with clear worker protections added for these cases including an anti-retaliation clause and a right to civil action for law violations. The bill would massively reduce if not eliminate the number of 24-hour shifts.

We strongly support the bill's intentions, and believe that shorter shifts should be the norm and not the exception for individuals who require 24-hour care. However, as currently drafted we have several concerns involving funding, staffing, and flexibility. We are actively working with the bill sponsors on these concerns:

⁷<https://static1.squarespace.com/static/58fa6c032e69cfe88ec0e99f/t/6022ae8312cfd1015354dbee/1612885635936/Executive+Summary+CUNY+REPORT.pdf>

- **Funding:** There is a major fiscal component to the bill that remains unaddressed, with the availability of Medicaid funds extremely uncertain. Industrywide estimates to cover existing 24-hour cases for 24 hours of work have been cited at an additional \$1-1.2 billion at current wage levels, and this figure could be similar for split 12-hour shifts, even with the likelihood of reduced overtime hours. Without this investment the bill could have dramatic unintended consequences.
- **Staffing:** The bill requires more workers to fill the split 8- or 12-hour shifts which are currently filled by one 24-hour worker, yet there is nothing in the bill to encourage the creation or retention of these jobs. We are already at a point of a pending workforce shortage, and without attention this bill could exacerbate the problem. For this reason, it is critical that this bill be packaged with other workforce reforms, including Fair Pay for Home Care and others.
- Finally, the bill should allow additional flexibility for those clients who would benefit from a consistent, 24-hour aide, like those with dementia or complex care regimes, while ensuring those employees are paid for the full 24 hours of work. This bill must find balance to support both employees and clients.

Reform State Policies: End the 13-Hour Rule, Fully Fund 24-Hour Care, and Adjust Pay Structures

Home care workers should be paid for every hour they work, even if that means 24 hours in a 24-hour shift. Without additional industry reforms or legislation such as the split shift bill, this is a necessary reform to address the current exploitative working conditions perpetuated by the State. This will require a multi-pronged approach. First, the State Department of Labor must end the 13-hour rule so that Medicaid and MLTCs can legally reimburse for all 24 hours in a 24-hour shift. Second, the State should increase Medicaid reimbursement rates and the availability of funding in the State Budget to cover the full and actual hours worked, including potential overtime hours that may result from these 24-hour shifts. Finally, the criteria currently used by Medicaid plans to evaluate need and approve coverage for round-the-clock care needs reevaluation so more New Yorkers in need can receive care. At the same time, we strongly oppose mandating employees to work 24-hour shifts. Should limited 24-hour shifts continue into the future, care must be taken to ensure these are not consecutive shifts, and that meaningful days off are the norm.

Additional State Recommendations

UNH has put forth additional recommendations to the State to bolster the home care sector, including the need for better data collection and evaluation, developing strong training and mentorship programs for the workforce, and exploring new mechanisms for industry-wide oversight. We also support the New York Health Act (S.5474 Rivera/A.6058 Gottfried) which would provide universal long-term care coverage for all New Yorkers. Finally, any significant home care pay reform will require additional funding and Medicaid support, which cannot happen without increasing or eliminating the State's policy of a Global Cap on annual spending increases that is tied to medical inflation rates. We are happy to follow up with more information on these recommendations upon request.

City Recommendations

The City's Human Resources Administration (HRA) plays a role in the home care sector, including by authorizing Medicaid cases, though it manages fewer cases than in previous years. Notably, the pandemic has exacerbated a delay in HRA authorizations and especially reauthorizations, leaving some organizations waiting for up to a year to receive authorization and payment, causing cash flow concerns. We have raised this issue with HRA and are working with them on a smoother process to avoid these delays.

In addition, the City can play a role in alleviating the home care workforce shortage by focusing on recruitment, training, and making home care an attractive career. This can include building on existing workforce development and training programs, such as a program at HRA that works with cash assistance recipients. There are additional opportunities to partner with CUNY programs and NYC Small Business Services (SBS). Further, many home care agencies have employer-led training programs, which are not supported by government contracts. A City investment in these programs could help them expand their work.

In addition, county-run, non-Medicaid home care cases are experiencing high demand, and as a result many counties are keeping waiting lists for home care services, as well as waiting lists for related case management and home delivered meals services. This includes New York City's DFTA cases. Both the State and the City need to provide additional funding to alleviate these wait lists, building upon an \$8 million State investment in the FY 2021-2022 budget for these unmet aging needs.

Thank you. To follow up, please contact me at tklein@unhny.org.