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## UNH Recommendations on Investing in New York's Home Care Workforce

### **Background**

#### **New York State faces urgent demand for home care**

- New York State has the fourth oldest population in the nation
- By 2030, [5.2 million people](#) in the state will be 60+, with 1.81 million 75+
- An estimated [seven out of 10](#) people 65+ will need some kind of long term care
- There are over 1 million New Yorkers with disabilities that require long term care

#### **The home care sector faces shortages due to persistent wage and labor issues**

- There are 330,000 home care workers in New York State, and by 2025, New York State will see a 33% growth in demand with a workforce shortage of [23,000 workers](#)
- The median salary for home care aides is [\\$24,810](#) (NY Department of Labor)
- One in four workers lives below the federal poverty line and more than half rely on public assistance to make ends meet

#### **Home care workers who work 24 hour shifts for round-the-clock care are not fully paid**

- The current labor regulation, known as the “13-hour rule,” excludes pay for meal and sleep times.
- Many home care workers report that the complex needs of individuals who are homebound often means workers [must provide active care during break hours](#).
- The home care industry's workforce is primarily comprised of by women, immigrants, and women of color, three groups whose rights and interests are rarely prioritized by decision-makers.
- Last year, the New York Supreme Court, Appellate Division decided through [three key cases](#) that home care workers must be paid for all hours spent at a client's home.
- In response to the Supreme Court Ruling, the DOL issued an [Emergency Regulation](#) in October 2017 to uphold the 13 hour rule temporarily.
- In October 2018, the NYS Supreme Court rejected the renewal of subsequent emergency regulations, claiming that they did not abide by the State Administrative Procedures Act's standards for “emergency.”
- Home care agencies, particularly nonprofit community based home care agencies, are caught in the middle of DOL regulations, inadequate wage reimbursement through Medicaid, and collective bargaining agreements that are not reflected in the aforementioned rates.
- The current environment puts smaller, community based home care agencies at risk, even though it is these providers whose workers serve niche populations with linguistic and culturally competent care.
- Without State funding intervention, the Supreme Court ruling would cause many home care agencies to go bankrupt and close, which would lead to the loss of jobs and the forced institutionalization of many New Yorkers who could have otherwise remained at home with adequate care (creating an even greater long-term cost for the State).

### **Recommendations**

New York State must take action to stabilize a sector in crisis and fairly compensate its workforce. The State must prepare to meet the needs of a growing population of seniors that wish to age in their homes with dignity, and most importantly, the State cannot achieve this on the backs of the home care workers who provide the critical care to make aging in place possible.

### **1) Address the mandated retroactive compensation of home care workers in the FY19-20 budget**

If the lawsuits are ruled in favor of the plaintiffs, there will likely be a 6 year lookback on this ruling from the start of the court cases due to the New York Labor Law Statute of Limitations. Without a budget intervention, most providers will be forced to close operations altogether. New York State must stand with workers and providers to ensure that its court decisions are reflected in the budget, lest the State face devastating industry collapse, job loss, and a public health crisis as seniors and New Yorkers with disabilities are forced into institutionalization.

Because the Supreme Court ruling may not be settled by the start of the fiscal year on April 1st, 2019, the State should create a lockbox or contingency fund in the FY19-20 budget to be prepared to retroactively compensate home care workers, rather than forcing providers to take on an unfunded mandate, thus prompting the collapse of the sector.

### **2) Fully fund 24-hour care through Medicaid reimbursement rates moving forward**

For New Yorkers that require 24-hour care, their home care worker should be compensated for those hours. Additionally, Medicaid reimbursement rates should be adjusted cover the full and actual cost of providing home care services, providing a living wage, and incentivizing innovation. There are three options to accomplish the 24-hour coverage funding:

- 24-hour Full Funding – For New Yorkers that require 24-hour care from the same worker, Medicaid reimbursement rates should cover payment for the full 24 hours, including potential overtime hours that may result from their shift. The criteria currently used by Medicaid plans to evaluate need and approve coverage for round-the-clock care also need reevaluation so that more aging New Yorkers and New Yorkers with disabilities are able to receive this care.
- Split Shifts – The State could explore expanding the use of 12-hour shifts for certain cases. While these hourly changes would improve conditions for individual workers and alleviate the root cause of the lawsuits, the cost of providing home care would remain the same. This would also be consistent with best practices in the medical and healthcare field. However, this may create some difficulties for patients with cognitive impairments such as dementia or other complex care regimes.
- On Call Hours – Rather than taking an all-or-nothing approach to paying for meal and sleep time, there may be certain uninterrupted cases where on call hours could be applicable. For example, many nurses are paid at  $\frac{3}{4}$  rate for their on call hours. While home care is a unique industry, similar principles could apply. This option would require expert input to ensure that it was designed and implemented correctly, without creating an undue reporting burden or unfair conditions for workers.

### **3) Coordinate oversight via a short-term task force and a permanent office to ensure stability and sustainability of the sector**

In order to determine best practices for the industry moving forward, the State should establish a 6-month taskforce to create and implement a comprehensive set of recommendations to stabilize the home care sector, create high quality jobs for its workers, and ensure that recipients receive high quality, dignified care in their homes. They should examine 24 hour care issues as well as issues of compensation, benefits, scheduling, Consumer Directed Personal Assistance Program, unpaid and family caregivers, career ladders, and other critical issues. The taskforce should be comprised of home care providers (both private and non-profit), home care workers, patient advocates, legal and labor experts, union representatives, other health care industry representatives, umbrella organizations, and directly impacted individuals. This would align with fiscal planning for FY 20-21. This short-term taskforce can also advise on the need for a permanent Public Home Care Advocate's office to act as a central liaison and resource hub for employers, employees, and home care recipients.

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