



**Testimony of United Neighborhood Houses
Before the New York State Assembly Standing Committee on Aging
Assemblymember Donna Lupardo, Chairperson, Committee on Aging**

**Healthy Aging
November 14, 2018**

Thank you for convening today's hearing on healthy aging to ensure older New Yorkers can age in place in their homes and communities. United Neighborhood Houses of New York (UNH) is New York's association of settlement houses whose membership includes 40 New York City settlement houses and two upstate affiliate members who collectively reach more than 765,000 people across all ages at over 680 sites.

UNH members provide a wide variety of services to over 80,000 older New Yorkers each year by operating programs such as Naturally Occurring Retirement Communities (NORCs), senior centers, home delivered meal programs, case management programs, licensed home care agencies for older adults, and others. UNH and its settlement house members employ the philosophy that older adults are valued members of our neighborhoods, whose wisdom and experience are important to the fabric of our communities. UNH believes that NORCs, senior centers, and case management programs, among others, are in themselves strong interventions that promote health and wellness, address social isolation, and provide meaningful opportunities for participants to be involved in broader community life.

UNH would like to highlight two key issues that affect the ability for older adults to age in place: the ability of NORCs to provide nursing services and employee compensation challenges within the home care industry. UNH recommends additional funding to support the growing challenge of providing nurses in NORCs and ensuring that the State reimburse home care agencies immediately for any additional financial burden as a result of pending litigation over 13-hour pay rules.

NORCs and Nurse Funding

Naturally Occurring Retirement Communities (NORCs) are housing developments or neighborhoods that were not originally designed as senior housing but have naturally become home to a significant number of older adults over time. NORCs receive contracts to coordinate support from housing, social service, and health care providers to promote the health and stability of older adults living in apartment buildings and housing complexes, as well as in slightly lower-density neighborhoods and rural areas (Neighborhood NORCs or NNORCs). NORCs support older adults who wish to age in their homes by providing health care, social services, and opportunities for socialization and activities to remain active. Currently, the New York State Office for the Aging (NYSOFA) contracts with 29 NORCs throughout the State, and it recently released a Request for Applications (RFA) to add several additional programs.

Thank you to the Assembly for all of its attention and support for the NORC program over the last several years, which has been invaluable in increasing funding levels and improving the program. NYSOFA-funded NORCs have experienced some contracting volatility over the last year, including an RFA in 2017 that was withdrawn after awards were announced. This process has underscored the need for stability in funding and contracting in the FY 2019-20 State budget, and it is crucial that programs continue to be fully funded while ensuring there are sufficient funds for the new programs added under the new RFA, and these funds must be baselined.

At the same time, many NORCs are facing a growing challenge. In addition to common funding issues such as maintaining quality staff while only being able to offer low salaries, NORCs are struggling to meet requirements for on-site nursing hours, which are mandated in NYSOFA contracts in the healthcare management and healthcare assistance and monitoring categories. The vast majority of NORCs fill these requirements with nurses. In alignment with the NORC model, these nurses provide important services that would not otherwise exist in the community, such as medication education, diabetes testing, flu shots, mobility and balance screenings, and helping clients get in touch with doctors. Many residents rely on these nurses as their main source of health care and truly value the care they provide.

At many NORC sites, providers secure pro-bono nursing services using Visiting Nurse Service, hospitals, students, retired volunteers, and other means. However, these arrangements are becoming unstable in the wake of recent Medicaid Redesign and billing changes, in addition to the growing need for health care as the State's population ages. Many nurses and NORC directors are worried about being able to maintain the arrangement. Consequently, NORCs are spending more to maintain the same level of service they have continuously been providing. In effect, nursing hours represent an unfunded, though important, mandate in NYSOFA contracts.

UNH recommends that NYSOFA and the Legislature look seriously at this growing funding challenge for NORC programs, and work to identify a mechanism to explicitly cover nursing services required in NORC contracts without adjusting unit of service requirements.

Home Care Employee Compensation

Three UNH member organizations provide non-profit home care services to their communities: Chinese-American Planning Council, St. Nick's Alliance, and Sunnyside Community Services. Together, these settlement houses provide service to over 4,500 clients with nearly 7,500 workers throughout New York every year. New York's home care employees work tirelessly to help patients who require assistance with the activities of daily living, the vast majority who are older adults. Home care allows vulnerable community members to remain at home with dignity and individualized care, which the vast majority of patients prefer over being sent to more institutionalized settings like nursing homes. Home care is also much more affordable than institutional care, and because state Medicaid reimbursements cover many of these patients, home care is also a much more affordable option for the State. The home care model is one that should be preserved and uplifted if New York is dedicated to healthy aging and keeping older adults in their homes and communities.

Unfortunately, recent legal activity surrounding home care employee wages threatens the viability of the industry, with the potential to spark devastating financial consequences for home care organizations, their employees, and the patients served.

Background

Under long-standing New York State Department of Labor (DOL) regulations, a residential home care employee who works for 24 hours must only be paid for 13 of those hours, with the remaining hours exempt and reserved for sleep (8 hours, 5 of which must be uninterrupted) and meals (3 hours). Many employees working 24-hour shifts are interrupted by their patients' various needs, and as a result an employee can be paid for 24 hours of a 24-hour shift if the employee 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 organizations to obtain additional reimbursement from their insurance plans. This means that employees often end up doing more than 13 hours of work for only 13 hours of pay, or employers take a loss because they are not reimbursed by their plans.

A series of recent state court decisions¹, brought at the behest of workers, invalidated the DOL's 13-hour rule, stating that employees must be paid at least the minimum wage for all 24 hours of a 24-hour shift, regardless of meal or sleep time. These cases await final hearings from the Court of Appeals and federal court. If the courts rule in favor of the plaintiffs and the 13-hour rule is abolished, **it is possible that providers will be held liable for substantial back-pay for the last 6 years, which would bankrupt many home care providers and wreak havoc on the industry, which the home care industry at large estimates could cost up to \$6 billion.**

In October 2017, the DOL issued emergency, temporary regulations that required home care employees continue being paid for 13 hours out of a 24-hour work shift. The regulations were intended to delay the court decision that requires 24-hour pay for 24-hour shifts, and it appears the DOL intends to attempt to make this ruling permanent, despite the emergency regulations being overturned by the State Supreme Court.

UNH Position:

UNH's nonprofit settlement house providers are committed to ensuring its employees are well-compensated for their labor and treated fairly. The current 13-hour rule is an economically unjust model for employees who often work more hours than they are paid for. At the same time, imminent changes to current laws cannot be advanced without concern for the financial viability of providers.

UNH understands that these lawsuits were spurred by a history of chronic low wages and poor working conditions for home care employees, in large part due to State regulations that providers have been consistently following. **Even if the lawsuits result in preserving the status quo, New York has an obligation to support its home care workers with fair pay and fair working conditions.** The State should investigate options such as creating an oversight entity, restructuring employee hours to focus on more split shifts of 12- or 8-hours, or variable pay scales for on-call hours. UNH and its members continue to investigate these options to ensure workers are treated

¹ *Andryeyeva v. New York Health Care, Morena v. Future Care Health Services, and Tokhtaman v. Human Care*

fairly and these lawsuits do not return in the future. At the same time, the State must balance the needs of employers to remain in business.

If court rulings invalidate the 13-hour rule and the DOL emergency regulations end, service providers will be responsible for covering additional wages both prospectively and likely also retroactively for the last 6 years. This financial burden could decimate nonprofit providers, with some UNH members individually estimating tens of millions of dollars in potential liability. This loss would cause ripple effects, including a loss of home care services to the community and the individuals who rely on those services, a loss to insurance plans, and a loss to New York State, which will have to cover the costs of higher-cost service provision in institutionalized and acute settings. Home care represents 80-85% of the operating budget of UNH's settlement houses that operate these programs, which means this requirement could also pose a serious threat to the stability of these organizations and their important wrap-around community services.

In a state where the fastest growing population is over 65, and the demand for home care is increasing, it is critical that New York State have a robust home care sector where the employees are fairly compensated, the organizations are robustly funded, and the patients receive high quality care in the dignity of their homes. Without paying competitive wages and ensuring fair working conditions, the State cannot hope to build and retain such a home care sector. Because providers are at the mercy of State contracts and reimbursements, this decision falls squarely on the State to shape the future of home health care.

Should the 13-hour rule be abolished, with or without the back-pay component, it is imperative that the State of New York reimburse providers immediately for the additional financial burden. Service providers should not be penalized for consistently following the State's labor rules. If the courts find that the State's regulations are misguided, it should be the State's responsibility to cover any incurred costs to service providers.

UNH will continue to work with partner organizations and the State to ensure New York develops an appropriate balance of fair employee pay standards, just working conditions, and reasonable reimbursement rates and standards for home care workers. We look forward to partnering with the Assembly in this effort.

Thank you for your time. For questions, you can contact Kevin Douglas at kdouglas@unhny.org or 917-484-9321.