



**Chinese-American Planning Council, Inc.
Testimony at the New York State Assembly Standing Committee on Aging
Assemblymember Donna Lupardo, Chair
November 14th, 2018**

Thank you Chairperson Lupardo and the Members of the Committee on Aging for the opportunity to testify today. My name is Carlyn Cowen and I am the Chief Policy and Public Affairs Officer at the Chinese-American Planning Council. The mission of the Chinese-American Planning Council, Inc. (CPC) is to promote social and economic empowerment of Chinese American, immigrant, and low-income communities. CPC was founded in 1965 as a grassroots, community-based organization in response to the end of the Chinese Exclusion years and the passing of the Immigration Reform Act of 1965. Our services have expanded since our founding to include 3 key program areas: education, family support, and community and economic empowerment.

About CPC

CPC is the largest Asian American social service organization in the U.S., providing vital resources to more than 60,000 people per year through more than 50 programs at over 30 sites across Manhattan, Brooklyn, and Queens. CPC employs over 700 staff whose comprehensive services are linguistically accessible, culturally sensitive, and highly effective in reaching low-income and immigrant individuals and families.

CPC serves over 11,000 older adults annually through our culturally-appropriate, linguistically accessible, community-based Senior Centers, where they participate in classes and social activities, access nutrition, health and mental health services, and get connected to resources and supports. We house 300 seniors through our affordable housing units. And we serve over 3,000 older adults and people with disabilities through our Home Attendant Program.

The Chinese-American Planning Council Home Attendant Program, Inc. (CPCHAP) is one of the largest not-for-profit home care service agencies in New York City, licensed in 1998 by the NYS Department of Health as a Home Care Service Agency. Under contract with the New York City Human Resources Administration from the outset, CPCHAP also contracts with many managed care organizations for the provision of Personal Care Services and Consumer Directed Personal Assistance Program to Medicaid-eligible individuals. CPCHAP serves about 3,000 home care recipients daily and employs over 4,000 employees.

CPCHAP is well-respected for its ability to provide culturally and linguistically competent home care services for individuals who live in one of the five boroughs of New York City and who are medically disabled, elderly and/or physically disabled who might otherwise require institutionalization. CPCHAP works with clients, their families, nurses, social workers and physicians in tailoring each plan of care and provides services for individuals who speak Chinese, Spanish, English, Russian, and Korean, as well as other languages. CPCHAP works



with patients and their families to offer the care needed, ranging from a few hours each week to 24-hour care.

Healthy Aging

Asian Americans are the fastest growing population in New York State, and seniors are the fastest growing subset. Over 1 in 3 Asian American seniors lives under the poverty line, and over 2 in 3 are Limited English Proficient (LEP). This makes the issue of aging in place of particular concern to CPC, and we are grateful for the opportunity to testify about issues that impact the individuals and families we serve.

Broadly speaking, New York State has the fourth oldest population in the nation, with 3.7 million people age 60 and over. By 2030, [5.2 million people](#) in the state will be 60 and older, with 1.81 million New Yorkers will be 75 or older. An estimated [seven out of 10](#) people over the age of 65 will need some kind of long term care. In addition, there are over a million New Yorkers with disabilities, chronic illnesses, or other functional complications that require direct care, creating an significant population in New York State that requires direct care support to live and age in dignity. Direct care in homes and communities is either provided by unpaid family caregivers, paid family caregivers, or home health workers through an agency. Care that takes place in homes and in communities is often higher quality, preferred by consumers, and less costly overall than institutionalized care. Many immigrant seniors and families prefer home health care because they can receive language accessible and culturally competent care that they would not find in institutionalized settings.

Because of the growing needs of people with disabilities and an increasingly aging population, the home care sector is the largest employer in the nation, yet continues to face shortages. In NYC alone, [there are 187,000 home health](#) workers, and in New York State, there are over 330,600 home health workers. Yet because of growing need, by 2025, New York State will see a 33 percent growth in need for home health aides and face a shortage of [23,000 workers](#). While automation and investments in technology serve to improve the function and efficacy of hospitalization and institutionalized care, this portion of the healthcare industry is highly reliant on human work, adding urgency to investments in this workforce.

Wage and Labor Issues in the Home Care Sector

A primary driver of this workforce shortage is chronic low wages and poor working conditions pervasive throughout the sector. More than [one in seven](#) low-wage workers in New York City is a home care worker. According to the New York Department of Labor, the median annual salary for home care aides is [\\$24,810](#). One in four workers lives below the federal poverty line and more than half rely on some form of public assistance to make ends meet. The workforce is primarily comprised of women (90%), people of color (60%), and approximately one in three workers are Limited English Proficient (LEP). We know much of this thanks to the work of the [Caring Majority](#), a coalition of seniors, people with disabilities, family caregivers, domestic workers, and home care providers from all across the state that seeks to improve the future of long term care.



Medicaid, the largest payer of home care and long term care in New York State, has exacerbated the workforce shortage through depressing wages in their reimbursement rates. Particularly for non-profit providers, home care agencies are beholden to the rates and requirements laid out by Medicaid and the State, and cannot compensate their workers adequately or competitively when caught between unfunded regulatory mandates and labor agreements. This complexity has ramifications across non-profit providers operations, from higher fiscal and stability levels to daily operations and home care worker scheduling as cases move in and out of eligibility. As the minimum wage rises in New York, these gaps widen for providers and home care workers alike. Increasingly, the emotionally and physically demanding labor of home care, in addition to inconsistent scheduling as providers balance underfunded plans and agreements, has become less attractive than other minimum wage jobs.

In addition to low wages, home care workers face high levels of uninsurance (twice that of the overall population), and inconsistent schedules. While the Fair Labor Standards Act was extended to home care workers in 2013, it has not been fully implemented in New York State, making scheduling and labor issues like overtime and spread of hours difficult for workers and providers to manage.

One of the most stark examples is that home care workers who work 24 hour shifts for round-the-clock care are being paid for 13 hours of work, with 8 hours allocated for sleep and 3 hours allocated for meals. Nonprofit home care organizations work hard to ensure that the home care workers have adequate space and uninterrupted time for sleep and meals. Despite these efforts, many home care workers report that realities of caring for someone that is homebound often mean that they [must attend to their clients during break hours](#). The consequence of this is that the effective hourly pay of the home care workers ends up being far below minimum wage.

Recent Court Decisions and Consequences for the Industry

Over the past several years, individual home care workers have brought lawsuits against their companies surrounding this issue. Last year, the New York Supreme Court, Appellate Division decided through [three key cases](#) (*Moreno v. Future Care Health Servs, Inc.*, [Tokhtaman v. Human Care, LLC.](#), and *Andryeyeva v. New York Health Care, Inc*) that home care workers must be paid minimum wage for all hours spent at a client's home.

The current industry standard was built on a [March 2010 opinion letter](#) from the New York Department of Labor, which interpreted minimum wage and overtime provisions of the New York Labor Law. In response to the Supreme Court Ruling, the Department of Labor issued an [Emergency Regulation](#) in October 2017, which allowed them to uphold the 13 hour rule temporarily while they examine a permanent solution. The DOL concurrently initiated a proposed rulemaking in July to codify and clarify that existing 13-hour rule. That final clarification has yet to be released. 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."



Because of their contracts, nonprofit home care organizations are being caught in the middle of the disagreement between the DOL and the Supreme Court. Home care agencies must comply with the DOL regulations. However, nonprofit home care providers' MCO and MLTC plans are funded through rates set by the Department of Health, which uses a formula based on a 13-hour work day (originally set by DOL). Requiring nonprofit providers to abide by regulations without a budget solution that coordinates reformulation of DOH rates, the State would force providers to make up the gap between the required wages (DOL) and the reimbursement from the contracts (DOH). This would cause a majority of nonprofit home care agencies to go bankrupt and close, which would lead to the loss of jobs and the forced institutionalization of many patients who could have otherwise remained at home with adequate care (creating an even greater long-term cost for the State).

This leaves New York with a sector in crisis, that will shortly be unable to meet the growing demand of the home care sector, for patients, employers, and workers alike.

Moving Forward by Addressing Historic Underfunding and Underpayment

In order to move forward with comprehensive reform for the home care sector that meets the growing demand, New York State must take action to stabilize a sector in crisis. New York State must prepare to meet the needs of a growing population of seniors that wish to age in their homes and communities with dignity. And most importantly, New York State cannot achieve this on the backs of the home care workers who provide the critical care to make aging in place possible.

At CPC, our workers come from the communities we serve, and they are the communities we serve. We call on New York State to create comprehensive home care reform that allows us to adequately compensate our workers and build the career ladders they need to thrive, while meeting the needs of our seniors who wish to age in place.

Without addressing historic underfunding of providers and underpaying of workers, there will be no moving forward for the home care industry, as the industry faces collapse. New York State must intervene on behalf of home care providers who have followed state labor regulations but are on the hook for multiple unfunded mandates. The following new regulations have yet to be reflected in Medicaid plan reimbursements:

- Spread of Hours
- 7 Day Overtime
- Wage Parity (for employees who do not take health insurance)
- Full minimum wage increase

Thus far, providers have had to make difficult choices to pay for these regulatory changes. Many have attempted stabilization by limiting the amount and types of cases they take on, thus reducing patient options and limiting hours available for staff.

In addition to the above, providers are now in need of emergency intervention. Plan reimbursement rates have not been adjusted to reflect the NYS Supreme Court Appellate



Division's recent ruling that home care workers must be paid minimum wage for every hour they are in the patient's home. Without this budget intervention, most providers will be forced to close operations altogether. The State must stand with workers and providers to ensure that these decisions are reflected in the budget, or face a industry collapse, job loss, and public health crisis as patients without care are forced into institutionalization.

These unfavorable outcomes affect all stakeholders in the home care field. For patients, it undermines and reduces the availability and choice of care. For agencies, it forces the shuttering of providers, starting with smaller shops who provide much-needed and niche linguistically and culturally competent patient services, further limiting choices and availability for patients. For workers, it further reduces hours that are already difficult to come by and may drive some workers to move from care agencies toward direct client or privately arranged agreements that may be less regulated, less stable, and less structured than agency work and care plans.

For these reasons, the State must retroactively adjust Medicaid reimbursement rates, providing stability to the industry and the patients it serves.

While we understand that the specific costs cannot be determined until the Appellate Court cases are determined, CPC recommends creating a lockbox or contingency fund in this FY19 budget so that the State is prepared to retroactively compensate workers, rather than forcing providers to take on an unfunded mandate, thus prompting the collapse of the sector.

Investing in the Home Care Industry's Future

The home care industry needs labor reform and investment to sustain its workforce and allow providers to meet growing demand. Investing in adequate wages, fringe benefits, career ladders, and innovative practices will allow us to attract the skilled workers needed to reduce the staffing shortage and meet industry demand.

Nonprofit community-based home care providers work hard to ensure that the home care workers we employ are responsive and reflective of the communities we serve. We believe the best care comes from providers who understand and represent the same values and cultural understandings of our communities. We also believe that those providers are best able to deliver quality care when their work is recognized and fairly compensated.

Federal, state, and local labor regulations are ever-evolving to meet the needs of home care workers, providers, and those that receive care. However, nonprofit community-based home care providers are often underrepresented in much of the decision-making. Further, because the home care industry is largely employed by women, immigrants, and people of color, we fear that the interests of workers and community-based employers take back seat to the influence of private providers and insurance companies.

We call on the State to create comprehensive reform to the home care industry that meets the needs of a growing aging population, while adequately compensating the workforce, and ensuring providers remain stable.



In addition to recommending fully funding 24 hour care, there are a number of recommendations that the State may consider moving forward, including:

- Split Shifts – The State should explore expanding the use of multiple 12- or 8-hour shifts over 24-hour shifts. 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. Further, many patients prefer consistency in their home care worker, especially those with cognitive impairments such as dementia.
- Variable Pay Scales – Rather than taking an all-or-nothing approach to paying for meal and sleep time, the State should consider a practice of paying workers lower hourly wages for meal and sleep time. For example, many nurses are paid at $\frac{3}{4}$ rate for their on call hours. New York has begun to recognize the importance of pay for on-call workers through recently-proposed DOL regulations which would require an on-call employee who is not called to work to be paid for at least four hours for each shift. While home care is a unique industry, similar principles could apply.

In order to determine best practices for the industry moving forward, the State could establish a 6 month to 1 year 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 consumers receive high quality, dignified care in their homes. The taskforce should be comprised of home care providers (both for and non-profit), home care workers, patient advocates, legal and labor experts, union representatives, other health care industry representatives, and directly impacted individuals. They should examine the above options, as well as others.

Lastly, we urge the State to create an oversight entity to focus exclusively on the evolving home care sector. For example, a Public Home Care Advocate could coordinate assessment and oversight of the industry, focusing on statewide data analysis, regulatory impact, workforce challenges, the future of the industry, as well as serving as a central resource for home care recipients, providers, and workers. Alternatively, the State could convene a short-term Home Care Task Force to create and implement a comprehensive set of recommendations to stabilize the home care sector.

As a mission driven non-profit, we believe strongly that this issue must be resolved with an eye towards equitable compensation practices that fairly value the labor of the home care workforce. At the same time, we know that any solution must also account for the fiscal realities of home care providers that rely on Medicaid dollars to meet labor costs, as is the case for our organization. Creating comprehensive home care reform will help meet the needs of a growing aging population in New York, allowing them to age in place, in their communities and homes, with dignity.

If you have any questions, please contact Carlyn Cowen at ccowen@cpc-nyc.org