

**Testimony of the Chinese-American Planning Council (CPC)**  
**Before the New York State Senate Standing Committees on Aging, Health, & Labor**  
**Senator Rachel May, Chair, Standing Committee on Aging**  
**Senator Gustavo Rivera, Chair, Standing Committee on Health**  
**Senior Jessica Ramos, Chair, Standing Committee on Labor**  
**July 27th, 2021**

**Homecare Workforce – Challenges and Solutions**

Thank you for the opportunity to testify at today's hearing on the Nursing Home, Assisted Living, and Homecare Workforce. 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.

CPC is the largest Asian American social services 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, Westchester and Long Island. 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 support. CPC's subsidiary affordable housing corporation supports 300 seniors through our affordable housing units. CPC's affiliated home care organization serves over 3,000 older adults and people with disabilities.

The Chinese-American Planning Council Home Attendant Program, Inc. (CPCHAP) is a not-for-profit, 100% Medicaid funded home care service agency based in New York City, serving all five boroughs, Long Island and Westchester, 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 in 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 and Dignified 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 live 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 aged 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. Compared to the overall population, which is expected to grow 3 percent between now and 2040, [the number of adults 65 and over will increase by over 25 percent, and the number of adults 85 and over by nearly 75 percent](#). The rapid aging of the population will cause an unprecedented demand for homecare.

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 and immediate care, creating a 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 or engaged by the consumer patient. 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.

## Wage and Labor Issues in the Home Care Sector

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, New York is the epicenter of a national home care worker shortage with a projected shortage of 50,000 workers by 2023, and over 83,000 by 2025. 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.

A 2018–2019 statewide survey of home care agencies showed that [17 percent of home care positions were left unfilled due to staff shortages](#). The COVID-19 pandemic has only exacerbated these shortages at the same time as the demand has increased:

“A survey of 77 New York State home care agencies in Fall 2020 found that 65 percent experienced an increase in home care referrals during the pandemic, both from hospital discharges and from families and individuals seeking to avoid the risks of nursing homes. Yet 85 percent of agencies reported worsening staff shortages, as the pandemic-related dangers of face-to-face direct care work added to the already existing challenges of recruitment and retention. As a result, 76 percent of the agencies surveyed were forced to delay acceptance of new referrals or deny them entirely in 2020” -[The Case for Public Investment in Higher Pay for New York State Home Care Workers](#) (p. 6).

As of February 2021, [over 10,000 individuals statewide were on waiting lists for these New York State Office of Aging](#) (NYSOFA) administered programs, including 2,950 individuals awaiting personal care services” (p. 20). This workforce shortage directly puts tens of thousands of New Yorkers at-risk because they cannot receive these critical services, with hundreds of thousands more on the brink of disaster.

Of critical note is the US Supreme Court’s decision in *Olmstead v L.C. (by Zimring)* that requires the state to provide access to community-based supports and services. New York State is constitutionally mandated to provide these critical long term care services. With more people needing home care services and a severe shortage of workers to provide them, this puts New York State out of compliance with this civil rights decision.

The cause of this workforce shortage is chronic low wages and poor working conditions pervasive throughout the sector. In 2006, home care workers earned approximately 150% of the state minimum wage on average. Today, almost all home care workers are paid the minimum wage or slightly above, earning dollars less per hour than fast food and retail employees, particularly in upstate New York. 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 live below the federal poverty line and more than half rely on some form of public assistance to make ends meet. The low wages chronic to the sector are deeply rooted and directly connected to the systemic devaluation of care work as work that is traditionally performed by women and historically enslaved Black women in the United States. Today, the home care workforce is comprised primarily of women (90%), people of color (60%), and immigrants (approximately one in three workers are Limited English Proficient), and the State continues to enshrine the devaluation of care work in its programs, practices, and reimbursement rates.

Medicaid, the largest payer of home care and long term care in New York State, has not only created but 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 when faced with inadequate Medicaid reimbursement. 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 struggle with high levels of uninsurance (twice that of the overall population), and inconsistent schedules (CPCHAP offers comprehensive health insurance, however this is not the norm). 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.

### **A Note on Fair Labor Standards Act**

Current Fair Labor Standards Act (FLSA) provides that an employee who resides on their employer's premises on a permanent basis or for extended periods of time is not considered as working all the time they are on the premises. This may include scenarios like workers in group homes, boarding schools, on cruise ships, resorts, or in other facilities where employees are provided separate living or rest quarters. However, home care workers face unique challenges because they are often the sole employee on the premises in which they rest and work. Group homes, cruise ships, and the worksites described above often have rotationally staff scheduled to cover those who are onsite but on rest periods. This staggered scheduling prevents excessive interruption during sleep and meal periods. Such fallbacks are not available for home care workers. As the sole employee in the employer's home, home care workers must respond to tasks regardless of their personal sleep and meal schedule. Additional split shift scheduling is only possible after a home care worker reports interruption of rest periods and the home care provider is able to successfully negotiate additional hours with the patient's plan.

Because 24-hour home care workers are designated as residing onsite for "extended periods," they are also exempt from "on call" hours, which, for occupations like hospital nursing, airline workers, and emergency workers, normally would cover sleep and meal periods while waiting to be called for active duty. Home care workers are caught in a regulatory gap: they are exempted from pay because of the amount of time spent on employer premises, but they are not afforded the same scheduling security or stability as other occupations that require significant time on employer's premises. This should be remedied by including home care workers under Fair Labor Standards Act protections.

## **Medicaid Funding for Home Care and Other Services**

Home care is primarily funded through Medicaid in New York State, and Medicaid has been the major financier of long term care services in the US since 1975. New York State's Medicaid program represents 87% of [home care and personal care](#) services, including managed long-term care plans (MLTCs), and nonprofit home care providers like CPC Home Attendant Program are 100% Medicaid-funded. In 2020, the Medicaid Redesign Team (MRT II) was tasked with identifying "savings and efficiencies" to the already underfunded State Medicaid

program, leading to over \$1 billion in cuts to Medicaid in the midst of a global pandemic, with over \$2 billion in cuts initially proposed.

Medicaid rates have been artificially depressed by the Medicaid Global Spending Cap, an arbitrary limit on spending growth that was put in place in 2011. This cap does not allow Medicaid spending to keep pace with essential program growth or respond to the number of people supported by Medicaid, causing a weakened public health system in New York State. One in three New Yorkers rely on Medicaid for their healthcare, whether through home care, Medicaid insurance, or Medicaid-funded health centers and programs. A strong Medicaid program supports a strong social safety net, but the arbitrary spending cap treats Medicaid as a problem to be treated with fiscal austerity.

Since the start of the COVID-19 pandemic, mass unemployment has shown the failures of a health insurance system tied to employment, with people losing their healthcare coverage at the moment they needed it the most. As a result, [over 820,000 people have newly-enrolled in Medicaid](#) since March 2020. Because of the spending cap, the only way to bring those new people into Medicaid was by cutting per capita spending for everyone else already in the Medicaid program. Cuts to Medicaid or failures to increase it proportional to need-disproportionately harm people of color, immigrants, disabled New Yorkers, seniors, and low-income communities by underfunding safety net hospitals, community-based providers and services, home care, and other critical Medicaid services.

## **The 24-hour Rule**

### **Background:**

One of the most urgent issues in the home care sector is the 24-hour rule, where home care workers are assigned 24 hour live in shifts for round-the-clock care, and 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 the realities of caring for someone that is homebound often means that they [must attend to their clients during break hours](#). CPCHAP has implemented systems to ensure that workers receive compensation for those interruptions, but this does not address the root issue of the impacts on home care workers of these gruelling shifts mandated by the Medicaid system- or the impacts on quality of care to patients.

Over the past several years, individual home care workers have brought lawsuits against their companies surrounding this issue. In 2017, 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 other than uninterrupted sleep and break time.

The current industry standard as set by the NYS Department of Labor was built on a [March 2010 opinion letter](#) from the NYS Department of Labor, which outlined 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 examined a permanent solution. The DOL concurrently initiated a proposed rulemaking in July to codify and clarify the existing 13-hour rule. 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." Subsequently, DOL reissued regulations codifying the above 13 hour rule in a way which fulfilled court requirements but left the underlying problems with the 13 hour rule unremedied.

The New York State Court of Appeals, in a 5-2 decision, overturned lower court rulings on March 29th, 2019, upholding that home care workers who work 24 hours get paid for 13 hours of work, provided that attendants receive at least eight hours of sleep time (of which at least five consecutive hours are uninterrupted) and three hours of meal time (one hour for the three meals) during which they do not have to work with their patients. More specifically, the Court of Appeals upheld the DOL's interpretation of its own previously promulgated regulation to allow for the 13 hours pay for 24 hour live in home care workers, and to implement that interpretation by issuing a "wage order" without any additional process. At the core of these cases is the application of administrative law to both administrative agencies and the processes which home care agencies must comply with. The Court of Appeals also accepted the State's argument that the DOL was in compliance with the Federal interpretation and practice, which allows for the 13 hour payments, in formulating its interpretation of the regulations.

The majority opinion, written by Judge Jenny Rivera stated, "Upon our review of the Wage Order and DOL's policy statements, we conclude that the DOL's interpretation is not inconsistent with plain language... nor is it irrational or unreasonable." The Court of Appeals emphasized in its ruling that if a home care worker receives one minute less than five hours of uninterrupted sleep, then the home care agency must compensate the attendant for the full 24 hours. The Court also emphasizes that the three meal hours must be totally work-free. Additionally, the majority opinion held open the possibility that home care workers' claims that they were not paid for their work during these break hours have merit, calling the allegations "disturbing and paint a picture of rampant and unchecked years-long exploitation." The majority opinion also indicated that it was for the DOL and the State Legislature to assess whether sleep and meal time exemption is a viable methodology to ensure employer compliance with the law and proper wage payment.

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

This would cause 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).

While 24 hour care is a critical issue, there are other regulations in addition to 24 hour care, including spread of hours, seven day overtime, and wage parity that have not been funded by

the DOH and that workers have active claims on. Thus far, providers have had to make difficult choices to pay for these regulatory changes. Against better guidance, some providers have only managed to stave off closure by limiting the amount and types of cases they take on, thus reducing options for seniors and people with disabilities and limiting hours available for home care workers.

**Recommendation: Immediately end the 24-hour rule and fully fund 12-hour split shifts**

Because of their contracts, nonprofit home care organizations must accept 24 hour live-in cases, but because of Medicaid reimbursement nonprofit home care organizations can only compensate those workers for the 13 hours unless a worker documents and reports interruptions, which imposes yet an additional burden on workers. Home care agencies must comply with the DOL regulations, and 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 (as originally set by DOL).

We recommend that New York State advance a legislative solution to create a robust home care sector that meets the needs of an aging population and creates a thriving workforce. Simply banning 24-hour cases will be insufficient, leaving open to harmful labor practices and putting the consumers who need to most care at risk of being unable to access it. We must advance a legislative solution that fully funds 24-hour care through Medicaid reimbursement rates to cover the full and actual cost of providing home care services, providing a living wage, and incentivizing innovation. This could be accomplished through breaking up round the clock care into 12- or 8-hour split shifts that would create better conditions for the worker, and by extension the consumer as well. This would also be consistent with best practices in the medical and healthcare field.

We recommend the urgent passage of the bill to end 24-hour shifts for home care workers and replace those live-in shifts with 12-hour split shifts (A3145- Epstein), which did not pass during the 2021 session. The State must immediately end the 24-hour rule in favor of two 12-hour split shifts where home care workers are fully compensated for each hour worked. Only the Governor and State Legislature can accomplish this reform through passing A3145. This would cost approximately \$1 billion in Medicaid each year to implement statewide, which is a small portion of the State's \$212 billion budget.

New York State has approximately 11,000 24-hour cases, staffed by 33,000 home care workers who have 24-hour shifts. CPCHAP has 54 of these cases (0.49%) staffed by 124 workers (0.37%). We believe that just one worker having a 24-hour shift is too many, and the State must act to end this practice.

The 24-hour rule has been set and enforced by the State since the 1970s, as home care workers have 24-hour shifts and are compensated for 13 hours. Home care regulations and compensation are determined by the State, contracted by the NYC Human Resources Administration (HRA), and backed by court decisions and 1199SEIU union agreements. Home care agencies do not, and cannot, determine these regulations and compensation. In addition, home care agencies cannot terminate any existing cases because of the Patients' Bill of Rights;

it is illegal to drop a case and leave a patient without care. When presented with a 24-hour case, CPCHAP strongly seeks State authorization for 12-hour split shifts, yet these requests are repeatedly refused by NYS and NYC. This is why the system must change to make 12-hour split shifts the standard instead of a rare exception. We also urge legislators to help providers gain HRA and Medicaid authorization for 12-hour split shifts for all existing cases, as a holdover solution until we pass this bill to create a permanent solution.

However, even once the bill is passed, the existing labor shortage means that there may not be enough home care workers to cover all shifts, as the amount of cases would multiply by effectively splitting a single case day into two shifts. Competitive wages are crucial to attract and retain a qualified workforce and meet demand (see below section on Fair Pay for Home Care). The State should set minimum requirements for payments from Medicaid managed care plans to home care providers, and to create incentives for investing in the workforce through improved compensation, training, advancement opportunities, and other innovations.

Similarly, it is also important to make sure that consumers' plan hours are not reduced as a result of fully funding 24-hour coverage through 12-hour split shifts. Expanding coverage through Medicaid and increasing funding for Expanded In-home Services for the Elderly (EISIP) would also help meet this need and ensure that seniors who need home care are able to access it. Adequate care for all who need it should not come at the expense of adequate wages for those who provide it, or vice versa. Instead, we must fully fund Medicaid to ensure that we have a robust workforce that is well-compensated to meet the needs of everyone who wants to receive care in their communities.

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. New York State must also recognize that home care is preferred for many disabled New Yorkers, especially as community-based assisted living becomes an increasingly rare or expensive option. 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.

## **Fair Pay for Home Care**

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. If New York State does not act swiftly to address the home care wage crisis, it faces industry collapse, subsequent mass unemployment, and public health crisis as patients without care are forced into institutionalization.

When there is a workforce shortage, it affects 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.

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 and provide the quality care an increasingly aging population deserves.

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 and patients. We also believe that those providers are best able to deliver quality care when their work is recognized and fairly compensated.

To combat the workforce shortage, and improve wages so that we can recruit and retain the workforce, and meet growing demand, Assemblymember Richard Gottfried and Senator Rachel May introduced [Fair Pay for Home Care \(S5374/A6329\)](#). This legislation would raise home care worker pay to 150% of the highest area minimum wage across the State. In July of this year, the fast food minimum wage outstripped the home care minimum wage for workers in the 54 counties north and west of Westchester. Home care workers and Consumer Directed Personal Assistance (CDPA) workers in those counties now make \$2.50/hour less than those who work in the fast food industry, making it even harder for people to fill much-needed home care jobs because they don't earn enough to pay their bills.

To rebuild long-term care in a way that prioritizes community-based services and the workforce, as well as bring New York into compliance with Federal requirements about access, home care workers must be paid a minimum of 150% of their current regional minimum wage. This will allow workers to remain in rewarding jobs providing critical care rather than making the tough choice to change industries due to subsistence wages and empower consumers to be able to have choice in who they hire, rather than accepting whoever shows up.

An investment in the home care workforce like Fair Pay for Home Care would wipe out the [home care workforce shortage in less than five years](#), creating 20,000 additional home care jobs per year for the next decade. It also finds raising home care worker wages would create almost 18,000 new jobs in other sectors. In all, the state would see increased revenue totaling \$5.4 billion, putting it on track to be one of the most successful economic development programs in the states history, and one that succeeds by solving long-standing issues of equity and dramatically improving the quality of life for seniors, people with disabilities, and a workforce long dominated by women, particularly women of color.

## Summary of Recommendations

New York State has rationed care for far too long, prioritizing government austerity and private profits over our quality of life and dignity. Workers have suffered, older adults have suffered, and disabled New Yorkers have suffered as a result, disproportionately women, people of color, immigrants, and low-income New Yorkers.

But it does not have to be this way. New York has the resources to fully fund Medicaid and the long term care services to meet the growing demands - and its constitutional obligation to provide them. We must reject solutions that pit workers and people receiving care against each other- that claim that we can only provide adequate care by paying low wages, or that if we increase wages that we will have to reduce hours of care. Rather, the solution is a robust long term care system in which we create good jobs where workers can thrive, and seniors, disabled New Yorkers and everyone else who needs home care can receive the full care they need in their homes with dignity.

In order to build this system, we must start with four actions:

- Pass A3145, the bill to end 24-hour shifts and fully fund split shifts;
- Pass Fair Pay for Home Care, to increase the minimum wage of home care workers to 150% of the minimum wage in the region;
- Remove the arbitrary spending cap on Medicaid, and fully fund Medicaid to meet the needs of the more than 1/3 of New Yorkers that rely on it;
- Pass the New York Health Act and guarantee universal long term care from day one.

Reforming our home care sector and rebuilding a just and caring economy is critical for Asian Americans and other communities of color, for immigrants, and for low-income New Yorkers. It is not only a moral imperative, an economic driver, and a critical public health measure- but the very lives of New Yorkers depend on it.

