Department for the Aging

TESTIMONY

Presented by

Alan Hom
Deputy Assistant Commissioner, Bureau of Long Term Care

on

Oversight: Home Health Aide Services in NYC

before the

New York City Council - Committee on Aging

Jointly with the
Committee on Mental Health, Disabilities and Addiction

on

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10:00 A.M.

at

Council Chambers, City Hall
New York, NY 10007

Good morning, Chairpersons Chin and Ayala and members of the Committees on Aging, and Mental Health, Disabilities and Addiction. I am Alan Hom, Deputy Assistant Commissioner for the Bureau of Long Term Care at the New York City Department for the Aging (DFTA). I am joined this morning by my colleague Annette Holm, Chief Special Services Officer of the New York City Human Resources Administration. On behalf of Acting Commissioner Caryn Resnick, I would like to thank you for this opportunity to discuss DFTA's work in home care.

OVERVIEW

DFTA's overarching mission, as you know, is to work to eliminate ageism and ensure the dignity and quality of life of New York City's diverse older adults through service, advocacy, and education. We accomplish this by partnering with hundreds of community-based organizations to provide services through senior centers, naturally occurring retirement communities, case management and home care agencies, home-delivered meal programs, mental health and friendly visiting programs across the five boroughs. Additionally, DFTA directly operates our Caregiver Resource Center, Senior Employment Services Unit, Elderly Crime Victims Resource Center, Foster Grandparent Program, Volunteer Resource Center and a whole host of other supportive services ultimately designed to keep New York City age-friendly and to help seniors age in place.

The Expanded In-home Services for the Elderly Program, or EISEP, through which DFTA's home care program is funded, was established by New York State (Chapter 894 of the Laws of 1986). The overall goal of this program is to improve access to, and the availability of, appropriate and cost-effective non-medical, in-home support services for older adults who are not eligible for services through Medicaid. As a state-funded endeavor, DFTA's contracted home care programs are required to abide by a comprehensive set of standards prescribed by the New York State Office for the Aging (NYSOFA), including oversight on client eligibility, cost sharing, training requirements, and other operational mandates. DFTA has a program monitoring role to ensure our home care agencies are in compliance with these standards. This includes a yearly assessment of each agency by DFTA program officers.

Through DFTA's contracted home care agencies, older New Yorkers are provided services that support their functioning in their homes, their daily living, and ultimately their ability to age in place. Individuals must first contact our case management agencies prior to accessing important DFTA in-home services such as home-delivered meals and home care. In FY '18, more than 33,000 older New Yorkers received

case management, an increase of 3% compared to the previous year. That same year, a total of 3,600 unduplicated clients received home care services. A typical DFTA home care client may be someone who needs support with laundry, light housekeeping, preparing meals, grocery shopping and/or someone who needs personal care assistance such as assistance with bathing, grooming and dressing.

In addition to our twenty-one case management agencies (CMA) across the city, DFTA contracts with four home care agencies to directly provide home care services. These agencies include *Personal Touch Home Care of New York Inc.* contracted to support the Bronx and Brooklyn, the *New York Foundation for Senior Citizens* contracted to serve Manhattan, *People Care Inc.* in Queens, and *Richmond Home Needs Services Inc.* on Staten Island.

As required by EISEP, each contracted home care agency must be licensed as a Licensed Home Care Services Agency (LHCSA) by the New York State Department of Health (NYSDOH) to assure care is provided within health and safety standards established by Article 36 of the Public Health Law. The core functions of LHCSAs are (1) to identify the client's needs and capabilities through a comprehensive in-home assessment; (2) to develop a comprehensive care plan in collaboration with clients and caregivers and prescribe appropriate interventions; (3) to reconcile the care plan with the CMA assessment, particularly if the identified needs and service hours differ; (4) to implement the care plan itself; and (5) to ensure that the performance of the home care worker is meeting expectations.

HOME CARE: ELIGIBILITY & STANDARDS

Consistent with NYSOFA regulations, individuals authorized for DFTA-funded home care must meet specific eligibility requirements. In order to be eligible for home care, a senior must:

- be 60 years of age or older;
- have functional limitations, as shown by the need for the assistance of another person with at least one Activity of Daily Living (ADL) such as bathing, personal hygiene, dressing, eating, toileting, mobility, and transferring, or two Instrumental Activities of Daily Living (IADLs) such as housework/cleaning, shopping, laundry, use of transportation, preparing and cooking meals, telephone use, and self-administering medications;
- have unmet needs for assistance with ADLs and/or IADLs;
- be able to live safely in the home if support is provided and to self-direct care; and

- be ineligible for housekeeping, a home attendant, or home health aide services under any other government program, including Medicaid or Medicare.

Additionally, clients are required to share the cost of services, based on income. Determined by a NYSOFA-imposed formula, clients will either be required to pay a sliding-scale fee or asked to make a voluntary contribution. The sliding scale rate ranges from $1 to $25 for each hour of service. Clients who elect not to provide any financial information will be required to pay the highest cost-share amount. Failure to pay the agreed upon cost-share may result in termination of service.

Eligible clients will be authorized a specified number of weekly hours of home care. Clients may periodically be authorized additional days or hours of service for special circumstances. A client in need of an escort to a doctor's office, for example, may qualify for additional hours of service. DFTA-funded home care is generally available Monday through Friday, and up to 8 hours per week for housekeeping/chore services and 20 hours per week for homemaker/personal care services. Night or overnight services are not available through DFTA's home care program. Finally, all of DFTA's home care providers work to match the most appropriate worker to clients. NYSDOH also dictates the provision of timely, reliable, and consistent service, and a back-up system which provides replacement or substitute workers to at-risk clients whose current workers are unable to provide care.

In addition to client eligibility, the State also dictates the standards by which the home care workforce is hired and trained. LHCSAs are required to adequately and appropriately screen their workforce—including home care workers and supervisors—prior to employment. Each LHCSA must have a demonstrable and systematic process for screening all applicants for such competencies and qualities as: ability to read and write, ability to record messages, and keep simple records in the language of the client, ability to communicate with clients, their families, and other caregivers, and ability to understand and carry out instructions. Applicants must also have a positive attitude towards older people with physical and/or mental impairments, and undergo a criminal history check.

As prescribed by the State Department of Health, home care workers must also meet required training qualifications upon hire. Proof of successful completion of trainings must be provided prior to the time of employment or within three months of being hired. This includes the NYSDOH-approved 40-hour basic training program, which covers such fundamental topics as working with elderly, body mechanics,

personal care skills, safety and accident prevention, and food nutrition and meal preparation. Home care workers must also complete an Elder Abuse training. On-going education and training are also mandated by NYSDOH in order to maintain and improve staff competence. Compliance includes the development of an in-service training plan to help workers develop techniques and skills not covered in basic training.

In addition to abiding by these licensing, hiring, and training requirements, our home care agencies must comply with a variety of operational mandates. LHCSAs, for example, must have a written client complaints procedure that includes timeframes for responding, investigating, and resolving client complaints. DFTA home care clients are encouraged to report complaints to their home care agency, case management agency, or to DFTA directly. DFTA also conducts an annual client satisfaction survey of a random sample of approximately 45 clients per home care agency. In an effort to improve overall quality of care, these results become part of the agency's annual program evaluation.

CONCLUSION

As we look to the future—when older New Yorkers are projected to reach 1.86 million by 2040—our commitment to the older adult population, including those who are homebound, remains steadfast. Although our home care program is small relative to the much broader Medicaid home care landscape, continuing to fund high-quality home care remains among DFTA's top priorities. Maintaining a positive working relationship with various State partners and oversight agencies allows us to accomplish this important endeavor. Thank you for this opportunity to offer testimony on DFTA's behalf. I am pleased to answer any questions you may have.

Human Resources Administration
Department of Homeless Services
Department of Social Services

Testimony of Annette Holm, Chief Special Services Officer
New York City Human Resources Administration

Oversight: Home Health Care Services in NYC

April 8, 2018

Good Morning. Thank you Chairperson Ayala, Chairperson Chin and members of the City Council's Committees on Aging and Mental Health, Disabilities and Addiction for inviting us to testify and respond to questions today. I would also like to thank my colleague Alan Hom from the New York City Department for the Aging (DFTA) for his partnership and for his testimony today. My name is Annette Holm and I am the Chief Special Services Officer of the New York City Human Resources Administration (HRA).

The New York City Human Resources Administration (HRA)/Department of Social Services (DSS) is the nation's largest social services agency assisting more than three million New Yorkers annually through the Administration of twelve public assistance programs. Every day, in all five boroughs, HRA provides essential programs and support to low-income New Yorkers. We work to ensure that our services and benefits provide low-income New Yorkers the assistance they need, through a wide range of supports, including Cash Assistance and employment services, the Supplemental Nutrition Assistance Program (SNAP/food stamps), eviction prevention, rental assistance, and Medicaid.

As part of our array of social services, HRA administers Medicaid-funded fee-for-service long-term care services through our Home Care Services Program (HCSP). I would like to take a moment to contextualize the current state of the Home Care Services Program by briefly outlining the State takeover of Medicaid in the State of New York and how it has directly affected the HCSP program. Prior to the implementation of New York State Medicaid Redesign, HRA Home Care was the local entity responsible for the determination of Medicaid and personal care service eligibility for all New York City residents seeking personal care assistance. The implementation of the New York State Medicaid Redesign (MRT #90), required the mandatory transition and enrollment of certain community-based long-term care services recipients into Managed Long-Term Care. This State project, which was initiated in 2012 with approval from the Centers for Medicare and Medicaid Services (CMS), was designated to integrate services and improve health outcomes for individuals in need of community-based long-term services and support. Within two years of MRT #90, the overwhelming majority of HCSP homecare cases were transitioned to Managed Long-Term Care Plans (MLTC). Medicaid eligible clients in receipt of Medicare and whose home care needs exceed 8 hours per week were required to seek home care services from New York State contracted Managed Care and Managed Long-Term Care Plans. However,

clients under the New York State Nursing Home Transition and Diversion Waiver or Traumatic Brain Injury Waiver or in active receipt of hospice services are exempt from Managed Care and can receive HRA home care services. Currently, the HRA Home Care Services Program determines Medicaid eligibility for all applicants seeking long-term care who are in receipt of Medicare, aged 65 or over, disabled and/or blind, including those enrolling in the MLTC programs.

Citywide, a total of 192,740 New Yorkers are in receipt of personal care services. Of these cases, HCSP is responsible for the direct administration of only 5,050 fee-for-service cases (as of February 2019); this subset is 2.62 percent of all State personal care cases in New York City. These cases are exempt from mandatory Managed Long-Term Care enrollment in New York City. For this population, HRA assesses home care eligibility and develops a care plan to meet the specific needs of each person. HCSP contracts with 28 licensed Home Care Providers to administer the services. The providers with whom we contract are licensed by the State. The Long-Term Care State regulations dictate the protocol for training and qualifications of Personal Care Aides in New York State.

HRA home care services permit clients to remain at home in the community with assistance and possibly avoid nursing home placement. These services provide assistance with activities of daily living which includes: bathing, grooming, and dressing, ambulation, taking of medications, laundry, grocery-shopping, house cleaning and escorting to medical appointments. Through our five Community Alternative Systems Agency (CASA) offices, HRA provides case management for clients receiving fee-for-service Medicaid home care services. The case managers assist clients with Medicaid renewal applications, home care service renewals, applications for SNAP benefits and rental assistance, and make referrals for additional services provided by Adult Protective Services, HASA, and partner City Agencies such as DFTA, as needed.

For the approximately 5,000 cases that HRA administers, the Home Care Contracts division within HCSP conducts fiscal and programmatic monitoring of the 28 contracted New York State-licensed home care service providers. To ensure program integrity, we conduct annually three programmatic monitoring visits of each home care contractor, during which we assess compliance with contractual service requirements and New York State home care regulations. For example, we check to make sure the home care providers' nurses are visiting clients at least every 90 days to assess the Home Care workers performance – and semi-annually to assess each client's care plan to ensure it meets the needs of each individual. In cases where any deficiency is found, we require providers to develop corrective action plans and conduct follow-up visits to ensure the issue has been properly addressed. Other examples of performance indicators are fingerprinting and criminal background checks of home care workers, annual home care worker evaluations and medical examinations with drug testing, client contacts and client satisfaction surveys.

In terms of fiscal compliance, HRA staff conducts fiscal monitoring visits to evaluate the adequacy of contract internal controls, deter fraud, and assess contractor compliance with laws, state regulations, and HRA requirements. And similar to our programmatic compliance monitoring, we also monitor corrective action plans and conduct follow-up visits to ensure that any issues have been addressed. Any

suspicion of Medicaid fraud is reported to the HRA Chief Program Accountability Officer and the New York City Department of Investigation.

I would like to reiterate that HRA only contracts with and oversees vendors that provide Home Care services in the category of Medicaid-funded fee-for-service, which represents approximately 2.62 percent of New York City's home care caseload; the overwhelming majority of Home Care services in NYC are provided through Managed Care Organizations, which are contracted with State Department of Health and with whom HRA has no contractual or oversight relationship.

In order to give clients the opportunity to voice any concerns about their HRA contracted home care services, HRA also administers a complaint hotline. HCSP's Complaint Tracking Unit investigates all complaints to determine if the individual is on HRA's caseload and to assess what, if any, actions can be taken to assist the client and remedy the situation. Where appropriate, vendors are required to file a corrective action plan to ensure they have policies and procedures in place to prevent the same issue from happening again. Vendors are monitored and given annual performance scores based on the number of complaints and resolution of complaints, which encourages adherence to programmatic guidelines. In the event a client calls HCSP for a complaint related to Managed Long Term Care, the caller is provided with the number to the State Managed Long-Term Care Hotline, which is 1-866-712-7197.

HRA is committed to helping all individuals in need access high-quality services for which they are eligible. Even though HRA administers a very small portion of the home care universe in New York City, we take pride in the work we do to link vulnerable New Yorkers to services which can be provided in the home and help them to remain in the community.

Thank you for the opportunity to testify today and I look forward to your questions.

UNITED NEIGHBORHOOD HOUSES
45 Broadway, 22nd Floor, New York, NY 10006
212-967-0322 | www.unhny.org

Testimony of United Neighborhood Houses
Before the New York City Council
Committees on Aging and Mental Health, Disabilities, & Addiction
Council Member Margaret Chin, Chair, Aging
Council Member Diana Ayala, Chair, Mental Health

Oversight - Home Health Care Aides – Qualifications, Training, and Protocol

Presented by Tara Klein, Policy Analyst
April 8, 2019

Thank you for convening today's hearing. My name is Tara Klein, and I am a Policy Analyst at United Neighborhood Houses (UNH). UNH is a policy and social change organization representing 40 neighborhood settlement houses in New York City with two in upstate New York. We mobilize our members and their communities to advocate for good public policies, and we promote strong organizations and practices that keep neighborhoods resilient and thriving for all.

The work we do strengthens the capacity of more than 30,000 employees and volunteers working across 680 locations to provide necessary services for people of multiple generations with programs that provide skills, education, social services, health, arts, and connection to community and civic engagement opportunities for over 765,000 New Yorkers who visit settlement houses each year.

Three UNH member organizations provide nonprofit home care services to their communities as State Licensed Home Care Services Agencies (LHCSAs) in New York City: Chinese-American Planning Council, St. Nick's 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. These organizations 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.

Today, I would like to provide an update on the legal challenges surrounding New York State regulations on home care employee pay structures – specifically the 13-hour rule – and argue that this is the time to put pressure on the State to make policy changes that will support low-income home care workers while simultaneously supporting the financial sustainability of nonprofit home care providers.

Importance of the Home Care Industry

New York's home care employees work tirelessly to help older adults and people with disabilities and chronic illnesses who require assistance with the activities of daily living. Home care allows vulnerable community members to remain living at home with dignity and individualized care, which the vast majority of individuals prefer rather than being sent to institutionalized settings such as nursing homes. Home care is also generally more affordable than institutional care.

The population of New Yorkers over age 60 is expected to increase by 1.2 million over the next 10 years to 5.2 million,[1] and 7 out of 10 of them will need long term care[2], in addition to over a million New Yorkers with disabilities and chronic illnesses. By 2025, New York State will see a 33 percent growth in need for home health aides and face a shortage of 23,000 home care workers.[3] With the demand for home care increasing and patients greatly preferring it, 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.

The 13-Hour Rule

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 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 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.

Legal Challenge

In 2017, a series of State court decisions[4] brought at the behest of workers invalidated the DOL's 13-hour rule, finding 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. The cases were appealed, and the DOL issued emergency temporary regulations that preserved the 13-hour rule. This led to a long period of uncertainty for the home care industry.

Providers feared that if the courts ruled in favor of the plaintiffs and the 13-hour rule was abolished, they would be responsible for approximately $1 billion per year across the industry in new payroll costs. The cases were not expected to compel insurance plans or the State to cover these costs, leaving costs on the provider. For nonprofits that rely on Medicaid reimbursement rates, this was a devastating prospect, with many fearing bankruptcy. Even further, the lawsuits were expected to include a retroactive back-pay requirement for the last six years, adding another $6 billion to the tab.

On March 26, 2019, the State Court of Appeals ruled on these cases to overturn the decisions of the lower courts, effectively preserving the status quo of the 13-hour rule. While the legal door is not completely closed, providers are breathing a small sigh of relief. However, especially for nonprofit providers who serve vulnerable community members and seek to promote social justice, a decision that perpetuates near-poverty wages is not one to celebrate.

Low Pay in the Home Care Sector

There is a moral imperative to ensure workers receive fair pay, regardless of the status of the lawsuits. The current 13-hour rule is an economically unjust model for employees who often work more hours

[1] https://aging.ny.gov/ReportsAndData/2015CountyDataBooks/01NYS.pdf
[2] https://longtermcare.acl.gov/the-basics/how-much-care-will-you-need.html
[3] https://mercer.healthcare-workforce.us/
[4] *Andryeyeva v. New York Health Care, Morena v. Future Care Health Services, and Tokhtaman v. Human Care*

than for what they are paid. Home care workers are already some of the most economically disadvantaged employees in the State, with a median salary of just $24,810[5] and one in four workers living below the Federal poverty line.

Exacerbating these 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, and providers cannot compensate their workers adequately or competitively when caught between unfunded regulatory mandates and labor agreements.

State Policy Recommendations

UNH has developed a series of policy recommendations that New York State should consider to help stabilize the home care workforce. These solutions all require some financial investment. However, the sector's employees 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 Council will act as a partner in advocating to the State Legislature this year to advance some of these policy ideas.

First, the State should consider **funding 24-hour pay through Medicaid reimbursement rates.** Medicaid reimbursement rates should be adjusted to cover the full and actual cost of providing home care services, providing a living wage, and incentivizing innovation.

In addition, the State should explore **expanding the use of multiple 12- or 8-hour split shifts** for certain cases. Already used for many patients, expanding this model would improve working conditions by ensuring employees are paid for all the hours they work, with the 13-hour rule effectively irrelevant. It would also reduce overtime pay costs for providers. However, split shifts may create some difficulties for individuals suffering with cognitive impairments such as dementia or other complex care regimes who prefer a consistent aide to avoid confusion, and thus this cannot be the only solution.

The State could also explore using **variable on-call pay rates** for sleep and meal times. For example, certain nurses are paid at 3/4 their 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. Similarly, those on-call hours could be paid at a per-diem rate instead of hourly, which would provide relief to workers while minimizing additional overtime expenses to providers. These options would require expert input to ensure that it was designed and implemented correctly, without creating an undue reporting burden or unfair conditions for workers.

Finally, given the unique challenges facing the home care workforce, the State should **coordinate oversight of the industry and develop best practices moving forward.** The State should **establish a short-term task force** to create and implement a comprehensive reform plan 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

[5] https://labor.ny.gov/stats/lswage2.asp#31-0000.

family caregivers, career ladders, and other critical issues. The task force should be comprised of home care providers (both private and nonprofit), home care workers, patient advocates, legal and labor experts, union representatives, other health care industry representatives, umbrella organizations, and directly impacted individuals. The task force would provide recommendations to support fiscal planning for the next budget cycle. This short-term task force 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.

With the home care sector at a crisis point in New York, it is critical that we build a robust sector where employees are fairly compensated with fair working conditions, provider organizations are robustly funded, and patients receive high quality care within the dignity of their homes.

Thank you for your time. For questions, I can be contacted at 917-484-9326 or tklein@unhny.org.

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Government Affairs
25 West 4th Street
New York, NY, 10012
P: 212 998 6866
M: 646 265 6033
government.affairs@nyu.edu

Testimony of the Hartford Institute for Geriatric Nursing (HIGN)
before
The New York City Council Committee on Aging
and
The New York City Council Committee on Mental Health, Disabilities and Addiction

April 8, 2019

Good Morning Chairperson Ayala, Chairperson Chin and all Council Members present. My name is Dr. Tara A. Cortes and I am Executive Director for The Hartford Institute for Geriatric Nursing (HIGN), the geriatric arm of the New York University (NYU) Rory Meyers College of Nursing. Thank you for the opportunity to testify today and share my expertise on the topic of home health aide services.

From 2015 to 2050, the U.S. population over age 65 will double, and the population over age 85 will triple. New York City demographics will be largely consistent with these national figures. Direct care givers—nursing assistants, home health aides, personal care attendants—will be essential to keeping people living in place at home or living comfortably in assisted-living or long-term care. The number of direct care givers must increase to meet this demand in cities across the country, and New York City should be no exception.

Turnover rates in the geriatric nursing field are high due to job dissatisfaction and burnout. To combat this trend, it is imperative that we provide better training, certification, and career advancement opportunities to prospective direct care givers. To meet all levels of care that will be needed over the next decades, the geriatric nursing community must develop the skills of direct care givers across the continuum—from personal attendants to advanced care givers. These efforts will help to ensure better outcomes, improved patient experiences and cost-effective care.

Support for workforce development is essential. The Hartford Institute is working with the Archcare Workforce Improvement Organization, funded by New York State Department of Health, to provide home health aides with the knowledge they need to feel confident in their jobs. For example, many aides leave their jobs because they cannot deal with aggressive behaviors which are often part of the disease stages in people with dementia. We teach home health aides to understand the behaviors and provide approaches to managing them. Continued support for this kind of workforce development is critical and further partnership and support from New York City's leaders is important in addressing the turnover rates for home health aides.

At HIGN we are keenly aware of the significant contributions the immigrant community makes to the home health aide services field. 1 of 4 direct caregivers in New York City is an immigrant. This community is a vital component of our workforce, and provides culturally and linguistically sensitive care to a multicultural aging population. Definitions of "skill" and "merit" in visa applications should be expanded to include all members of the health care team, specifically direct care givers—HIGN would support any efforts to achieve these expansions.

In addition to these policy changes, encouraging further involvement of the New York City immigrant community in geriatric care will be critical given our ever-diversifying and aging city population. We would be interested in partnering with the city to support ongoing training in cultural competence, including bias concerns, to enhance communication and care amongst teams providing healthcare to older adults.

Since its start in 1996, the singular mission of the HIGN has been to shape the quality of health care of older adults. Today's health care landscape offers exciting and unique opportunities for HIGN to leverage health care reform to positively affect the quality of care of the aging population. We are here today to welcome the opportunity to partner with the City Council and lend our expertise in this field.

Thank you for the opportunity to testify, and we would be happy to answer any additional questions the Committees may have. (Please contact Konstantine Tettonis, NYU Government Affairs, kt1249@nyu.edu)

華人策劃協會 CPC ADVANCING OUR COMMUNITY

Chinese-American Planning Council, Inc.
Testimony at the New York City Council Joint Hearing on Aging and Mental Health, Disabilities and Addiction
April 8th, 2019

My name is Wayne Ho and I am the President and CEO 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."

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. 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 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, than 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.

Because of their contracts, nonprofit home care organizations are being caught in the middle of the disagreement between the DOL and New York State Courts. 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). 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.

Next Steps and Recommendations

While this represents a final decision on this case, the stability of the home care industry is still in jeopardy as this case did not deal with other retroactive issues around hours and scheduling, nor does it create a permanent solution moving forward. We recommend that the State fund a global settlement to address all retroactive issues in the home care sector created by the Department of Health (DOH) and the DOL, and establish a permanent solution to stabilize the sector, the agencies, the workers, and the consumers moving forward. We urge the New York City Council and the City of New York to join in advocating to New York State to implement these recommendations.

Addressing Retroactive Issues

Because of their contracts, nonprofit home care agencies have been caught in the middle of the disagreement between the DOL and the New York State Courts. Home care agencies must

comply with the DOL regulations and therefore have had to pay in accordance with the 13 hour rule.

They are also beholden to the Medicaid rates as set by the DOH. At the same time, 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.

We recommend that New York State intervene on behalf of home care providers who have followed state labor regulations but are on the hook for multiple unfunded mandates. A global settlement around all retroactive issues including meal and sleep hours, wage parity, spread of hours, overtime and other issues would allow past issues to be addressed, leaving room for a permanent solution moving forward. While many nonprofit home care agencies will find a need to participate in such a settlement, many will not be able to afford it without State intervention, risking the stability of the sector. Additionally, it is reasonable that the State should be at the core of this effort, given that they laid out and funded the regulations in question through the DOL and the DOH.

Creating a Permanent Solution for the Home Care Sector

The upholding of the 13-hour rule fails to address the growing crisis in the home care sector, which will see a shortage of of 23,000 workers in the next five years. This is largely due to low salaries (the median salary for home care workers is $24,810, and one in four workers lives below the federal poverty line), and challenging schedules. At the same time, the aging population is growing in New York State- by 2030, 5.2 million people in the state will be over the age of 60, with ⅓ of them being over the age of 75, in addition to the one million New Yorkers with disabilities. An estimated seven out of 10 people 65+ will need some kind of long term care.

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 New Yorkers with disabilities, 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.

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. Because the State sets the Medicaid rates and the labor standards, this can only happen at the New York State level. This could be accomplished through:

- 12- or 8-hour Split Shifts– Breaking up round the clock care into 12- or 8-hour split shifts 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. This would be less costly than fully funding 24-hour shifts as they would not include overtime pay. However, 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 or three shifts. Competitive wages are crucial to attract and retain a qualified workforce. This model may also create some difficulties for patients with with cognitive impairments such as dementia or other complex care regimes (see below).

- 24-hour Full Funding– In special cases, 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.

In order to determine best practices for the industry moving forward, the State should 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.

As the State is examining comprehensive solutions, there are additional issues at the City level that home care agencies face that should be considered at both the State and City level, including:

- The rate increase provided by Human Resources Administration (HRA) to Licensed Home Care Services Agencies (LHCSA) is historically very slow. Agencies need to fund the shortfall until rates are approved and passed on to LHCSAs (Sometimes 9 months or longer). Waiting such extensive periods for rate adjustments to become effective proves to be a great financial burden.
- Managed Care Organizations/Managed Long Term Care (MCO/MLTC) billing systems/processes should allow LHCSAs to be able to bill beyond two to three months from the service date. Billings to HRA will be accepted and processed by Medicaid Management Information System (MMIS) even if it is over one year old.
- Receipt of re-authorizations at the expiration of the current authorization are not provided to the LHCSA in a timely manner. Multiple months can pass in which the MCO/MLTC does not provide the new authorization and therefore billing for those months is unsuccessful until the authorization is issued.
- Doctor's need to be more accountable and required to sign patient/client doctor's orders. The Department of Health requires the LHCSA to have every order signed within 30

days while many doctors do nothing to help them meet that requirement and some never sign the order.

We urge the Council to join us in advocating for New York State to build a robust home care sector that meets the needs of all New Yorkers.

HARTFORD INSTITUTE FOR GERIATRIC NURSING
NYU RORY MEYERS COLLEGE OF NURSING

What it is the Bronx Health Corps Program?

For the past nine years, the Bronx has ranked last in New York State county health outcomes. The borough in great need of healthcare improvement, especially for older adults. With funding from Health Resources and Services Administration (HRSA) and NY Community Trust the Hartford Institute for Geriatric Nursing at the NYU Rory Meyers College of Nursing has developed a volunteer health corps to teach older adults about healthy behaviors and self-management of chronic disease.

The Bronx Health Corps targets this issue by creating a new model of care for older adults in the Bronx.

We achieve this by recruiting members of the Bronx community to serve as volunteers for the Health Corps. As Community Health Navigators, these volunteers work with physicians, nurse practitioners, case managers and other professionals within RAIN, JASA, NYU, and Montefiore.

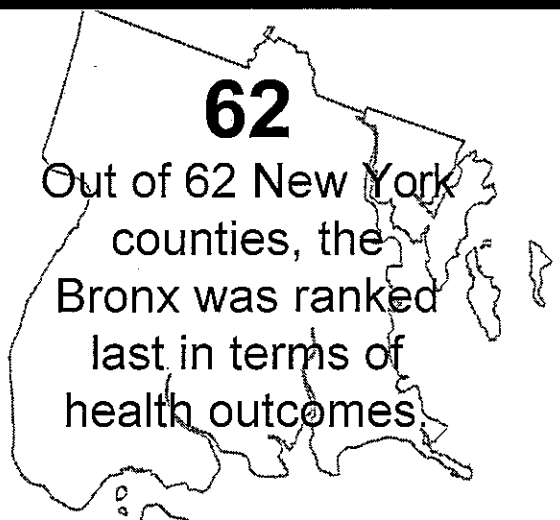
Through building networks within the community, we can support wellness, care coordination, patient and family-centered healthcare, and managing the healthcare needs of older adults.

These efforts will revolutionize the healthcare system for older adults by shifting primary care. No longer will care be provided solely within the walls of a physician's office, but through a continuum of coordinated care across the community.

Community Health Navigators will be educated on a variety of health topics; sharing what they have learned with their older adult peers. Topics include healthy diet and exercise, stress management, older adult sexuality, living with Alzheimer's disease and related dementias, heart health, and asthma. To date, ***we have educated nearly 5000 community members*** and aim to continue creating positive impactful change in the Bronx and beyond.

BRONX HEALTH CORPS

THE ISSUE



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Out of 62 New York counties, the Bronx was ranked last in terms of health outcomes.

- Robert Wood Johnson Foundation and the University of Wisconsin Population Health Institute's 2018 County Health Rankings

WHAT WE DO

Through volunteer training, health literacy education, and community engagement, we empower older adults to manage their health.

OUR IMPACT

VOLUNTEERS

160
Volunteers trained

284
Classes Taught by Volunteers

PARTICIPANTS

4800
Older Adults Educated

75%
Positively Changed Health Behavior

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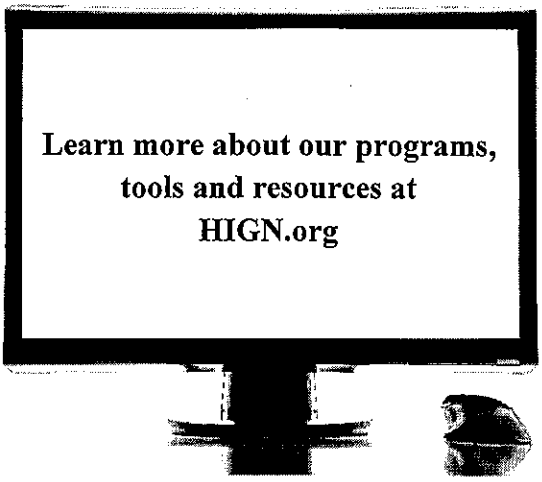
The Hartford Institute for Geriatric Nursing (HIGN)

Since its start in 1996, the singular mission of the Hartford Institute has been to shape the quality of health care of older adults. The commitment to this mission exhibited by the dedicated Hartford Institute leadership, staff and affiliate organizations has made the HIGN today a globally recognized geriatric presence. The Hartford Institute for Geriatric Nursing is the geriatric arm of the NYU Rory Meyers College of Nursing, and has become, over the years, a beacon for all those who wish to advance geriatric care through nursing leadership and interprofessional team care.

Our Mission
To ensure older adults achieve optimal health and quality of life.



Resources on HIGN.org include:

- **Try This® Assessment Series:** evidence-based geriatric assessment tools:
  - ✓ General Assessment Series
  - ✓ Dementia Assessment Series
  - ✓ Specialty Practice Assessment Series
  - ✓ Quality Assurance and Performance Improvement in Healthcare for Older Adults Series
- **Primary Care of Older Adults Program (PCOA) Series**: e-Learning modules to improve the knowledge and skill sets of primary care providers, RNS and the interprofessional team with patient- and family-centered and evidence-based care that is responsive to the particular needs of older adults
- **Interprofessional Education and Practice (IPEP) ebooks**
- **ConsultGeri iPod and iPad Apps**: Covering topics such as Delirium, Agitation, Confusion, Fall Prevention and Post Fall Evaluation
- **Gerontological Nursing Certification Review Course**
- **Geriatric Interdisciplinary Team Training- GITT Kit and GITT 2.0: Inter-professional Resources** Developing teams of professionals to manage the complex health care issues of older adults
- **Geropsychiatric Nursing Initiative:** online learning modules coverings topics such as Depression and Delirium Modules
- **Evidence Based Nursing Protocols**
- **And much more!**

433 1st Avenue, 5th Floor, New York, NY 10010

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Wayne Ho

Address: _____

I represent: Chinese-American Planning Council

Address: 150 Elizabeth St

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Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 4/8/19

(PLEASE PRINT)

Name: Tara A. Cortes, PhD, RN, FAAN

Address: 433 First Ave

I represent: Hartford Institute of Geriatric Nursing, NYU

Address: 433 First Ave

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Name: ALAN HOM (DEPUTY ASSISTANT COMMISSIONER)

Address: 2 LAFAYETTE ST.

I represent: DFTA

Address: _____

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Name: Arnold Ng

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Name: Annette Holm

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I represent: NYC HRA

Address: 4 WTC

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Appearance Card

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Date: 4/8/19

(PLEASE PRINT)

Name: Tara Klein

Address: _____

I represent: United Neighborhood Houses

Address: _____

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THE COUNCIL
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Appearance Card

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☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Chris D'Andrea

Address: Assistant Commissioner

I represent: DOHMH

Address: _____

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