Kathy Febraio
President and CEO
febraio@nyshcp.org

20 Corporate Wood Blvd.
2nd Floor
Albany, NY 12211
hcp@nyshcp.org
(P) 518.463.1118
(F) 518.463.1606
www.nyshcp.org

Testimony of the New York State Association of Health Care Providers, Inc.
Presented to the NYS Legislature 2022
Joint Budget Hearing on Workforce Development
January 31, 2022

Introduction

On behalf of the New York State Association of Health Care Providers, Inc. (HCP), which represents the spectrum of home care providers across New York State, thank you for holding this hearing and for your efforts to address the workforce crisis faced by the citizens of New York State.

The home care sector employs hundreds of thousands of home care workers in New York State. Workforce issues and concerns related to them are not new to home care providers. These struggles have become more acute due to a number of factors, including COVID-19, the high incidence of unemployment, inadequate reimbursement rates, lack of reimbursement rate transparency, and unreimbursed training and overtime costs, among other financial and social factors. Personal protective equipment expenses and regulatory constraints have added to the financial and administrative burdens of an already taxed home care industry. It is not unrealistic to forecast a detrimental impact on the delivery of home and community-based services (HCBS) if these issues remain unaddressed by policymakers. All of these issues directly impact the sustainability and growth of the home care workforce.

Unfortunately, unlike 38 other states New York has not provided any financial pandemic assistance to this critical sector of the health care industry. The current regulatory structure has allowed insurers to turn a deaf ear to the needs of home care patients, workers and agencies. Families across the state need your intervention now so the elderly and the disabled across the state can be cared for in their homes.

An Essential Workforce for the Health of New Yorkers

According to PHI, the nation's leading authority on the direct care work force, the need for new home care workers between 2018 and 2028 will be in excess of 980,000 workers as a result of growth in the need for services and the replacement of workers leaving the workforce. Tools are needed to significantly increase home care worker recruitment and retention, and to lift the status of these essential workers through training and development programs, as well as with public education regarding their importance in the health care continuum.

An investment in home care results in cost savings in the long term by reducing hospitalizations and nursing home admissions. An investment in home care workers improves the health of New Yorkers by maintaining community involvement and allowing vulnerable individuals to remain at home, which has shown time and time again to be the care setting of choice. An investment in the home care workforce boosts the economy overall by allowing family members to enter or continue working, knowing their loved ones are cared for by trained professionals.

Given this year's significant investment of Federal Medical Assistance Program (FMAP) funding, New York policymakers have the once-in-a-generation opportunity to make significant improvements to the state's home care delivery system. HCP notes that several other states have increased reimbursement rates for home care providers even before the additional FMAP funds were a reality. These states recognized the added provider expenses due to COVID-19. Unfortunately, New York has not taken any such steps to assist home care providers nor the workers they employ.

It is welcome news to the home care industry that the Biden administration has focused on investing in home and community-based services (HCBS) and its workforce as core values of its infrastructure plan. Unfortunately, the Build Back Better initiative has stalled in Washington, and the home care industry now turns to our state policymakers if we are to develop this workforce and enable New Yorkers to age and heal where they want to be – at home.

General Pandemic Effects on the Home Care Workforce

Many home care providers reported drastic worker losses throughout the many months of the pandemic. Workforce reductions of 10, 20, even 30 percent were commonplace. As a result, agencies were forced to transfer caseloads for reassignment to other providers. At a minimum, most could not take on new patients, as no workers were available to provide care. Many patients went without the personal care they needed to remain safe and healthy at home.

Caregivers in the home care industry are primarily women. During the public health emergency, many of these women opted to leave the workforce to care for their own loved ones who fell ill or were at high risk of COVID-19 infection. Others feared for their own safety or had difficulty finding consistent daycare for their children as schools have struggled to remain open and opted to take a break from working in health care.

Adding to the workforce shortages was the supplemental unemployment provided to many who normally would not meet the criteria for benefits. Quite simply, it was safer, easier, and more economical for these already low-paid workers to drop out of home care.

COVID-19 Vaccine Mandate

HCP has long provided education about the safety and effectiveness of COVID-19 vaccinations, and fully understands the need for health care workers to be up-to-date on these vaccinations to protect the patients they serve. However, there remains a struggle among some home care workers to get vaccinated.

The COVID-19 vaccine mandate hit the home care workforce especially hard. We expect the recent; booster mandate to have the same devastating effects.

This is a workforce comprised primarily of women, many of them members of minority groups historically resistant to vaccination. As a result, home care agencies reported losing high percentages of workers this fall, as employees left for jobs without such mandates. (These jobs, it should be noted, often provide higher wages as well.)

Many home care providers have been unable to staff current cases, and certainly cannot take on new patients in need of care. When there is a workforce shortage in home care, the logistics of assuring everyone gets the care they need is far more complicated than in a facility where other staff members are present. In home care, one caregiver is responsible for the complete and total care of one or more patients.

While Executive Orders show foresight and preparedness for preventing health care worker shortfalls, these initiatives simply are not practically applied in home care. As home care positions are generally low-paying jobs with little recognition for the services they provide, out-of-state and retired caregivers are not be enthusiastically helping out where needed.

Important for the legislature to note in their workforce development discussions is that home care providers have been reporting worker vaccination rates and termination data to the Department of Health for many weeks via a DOH required survey. This data, however, has not been released or brought into discussions about the effect of the mandate on this unique workforce. HCP asks that this information be released and reviewed without delay to inform policy and assure continuity of care for vulnerable New Yorkers.

Training Programs for Home Care Workers

In March 2020 with the onset of the global pandemic, the ability to train home health aides and personal care aides came to an abrupt halt. With the safety restrictions on space and social distancing requirements, the ability to train aides in the traditional classroom setting become difficult if not impossible for providers, especially in, but not limited to, the downstate metropolitan area of New York. Moving forward, until such time as the pandemic crisis is over, adherence to space limitations and social distancing requirements will continue to impact the ability to train personal care and home health aides.

In the fall of 2020, HCP and other home care stakeholders proposed to DOH a program offering a possible solution: That the delivery of aide training both for personal care aide and home health aide through online mechanisms immediately be approved by the department. Online training is a cost-effective model that provides an efficient mechanism for candidates to be fully prepared and quickly enter the workforce.

Not offering a timely solution in the face of a public health emergency, instead the Department took many months to develop a hybrid training model. The criteria were unclear, thus requiring more months of discussions and clarifications surrounding the approval process. As of today, only a handful of agencies have had the resources to endure the lengthy approval process and institute a hybrid training program.

HCP implores lawmakers to work with the home care industry to develop a modern, cost-effective model for training these valuable workers. Advanced professional degrees can be attained through on-line study. Surely there is a way the state could envision a similar opportunity for workers that are desperately needed in the health care system.

Fair Pay Proposal

We are sorely disappointed that home care worker wages have been ignored, or at the very least, minimized, in the Executive's budget proposal. Governor Hochul's Budget Briefing Book mentions that the industries that have been slowest to come back are the State's lowest paid workforces. Home care workers certainly meet that criterion. Personal care was cited as one of the services groups where employment is down over 15%. As noted in the briefing, this is also a service sector which has been most at risk during the pandemic.

The Governor's substantial health care investment makes no mention of home care outside the proposed health care work force bonus which will take a year to be realized. More immediate attention is needed to boost and develop our state's caregiving community. Human services workers are slated for a cost-of-living increase in the Executive proposal. Home care workers are receiving nothing, and it has been noted that minimum wage increases will apply to them and will be sufficient. HCP stresses that minimum wage is not fair compensation to these hard working, highly regulated caregivers who help New Yorkers stay in their homes and communities.

HCP is proud to join with other stakeholders, as well as with Senator May and Assemblymember Gottfried in support of the Fair Pay for Home Care Workers Act. HCP and its members are so grateful to the bill's sponsors for their efforts to craft a proposal establishing a fair wage for home care workers while addressing the struggles that home care agencies experience with grossly inadequate reimbursement rates from managed long-term care (MLTC) companies.

During budget discussions, HCP and other stakeholders want to make clear and emphasize in the strongest terms possible today that ***any such proposal to increase wages must include minimum hourly Medicaid reimbursement rates that include wages, benefits and provider costs. The current bill language includes the means to accomplish this and must not be compromised.***

These recommendations include:

- At a minimum, separate minimum hourly reimbursement rates must be established in statute for the following geographic regions: New York City; Nassau, Suffolk, and Westchester; Rest of the State.
- Regional base hourly minimum reimbursement rates would be effective with the Fair Pay wage increase and adjusted annually by DOH based on cost report data to reflect costs or additional requirements.
- Minimum hourly rates must reflect regional costs for:
    - direct service, inclusive of overtime, all benefits, and payroll taxes, including but not limited to FICA, Medicare, FUTA, SUI, Disability, Workers' Compensation, MTA Tax, and related increases tied to base wages;
    - reasonable administrative costs for licensed home care services agencies (LHCSA) and the per member per month for Fiscal Intermediaries (FI);
    - development of profits or reserves as allowable by law or regulations of the Commissioner;
    - allowances for capital costs; and
    - any additional supplemental payments such as a rural rate add-on, transportation expenses, and wage parity in wage parity regions.

These inclusions guarantee adequate reimbursement to employers to cover the living wage and its associated costs. State payments to MLTCs and in turn, MLTC payments to providers, must be wholly transparent to ensure efficient, fair use of taxpayer money.

Creating a Legacy of Care© Mentorship Program

Another very promising solution to home care workforce recruitment and retention is our Creating a Legacy of Care© Mentorship Program. HCP, along with its affiliate, Community Health Care Services Foundation, Inc. (CHC) implemented a peer-to-peer mentoring program pilot at several home care agencies throughout New York state. The pilot program began on June 1, 2020 and concluded on May 31, 2021.

The peer-to-peer mentoring program was designed to promote personal and professional growth opportunities by partnering experienced caregivers who want to share their knowledge and skills with newly hired caregivers. The goal was to decrease caregiver turnover rates in the first 90 days of employment—the time frame with the highest level of turnover in home care.

Key Findings

The pilot program found that caregiver turnover rates of employment (pilot vs. non-pilot agencies) show that non-pilot agencies, those without mentorship programs, had a **170% higher caregiver turnover rate** in the first 90 days of employment as compared with pilot agencies during the research period.

What Does This Mean?

This program shines a bright light on a recruitment and retention tool that proves mentorship makes a difference for the dedicated and compassionate workers in the home care system.

The Creating a Legacy of Care© Mentorship Program increases caregiver satisfaction. The mentorship program improved the cohesiveness between the home office and the aides, as well as improved the connections among and between home care workers who often feel isolated in their work.

HCP is pleased to share with you the results of the program via the following link: Creating a Legacy of Care Mentorship© Program.

DOH Initial FMAP Spending Plan for HCBS

In the Department of Health's (DOH/the Department) initial spending plan for implementation of the American Rescue Plan Act (ARPA/the Act) which provided additional Federal Medical Assistance Program (FMAP) support for Medicaid HCBS, DOH included proposals targeted to the home care workforce. In particular, the initial spending plan included proposals to:

- transform the Long-Term Care Workforce and Achieve Value-Based Payment (VBP) Readiness and
- provide a Home Care Workforce Transportation Incentive and
- expand Advanced Training Incentive Program for HCBS Transitions from Nursing Homes

With regards to the first proposal for **workforce transformation**, the Department is already moving forward with the logistics of its as yet unapproved plan to distribute funds to only one third of registered Licensed Home Care Services Agencies in the state.

HCP and other industry stake holders continue to hold that this limited distribution will result in a reduction in access to home care providers who deserve equal assistance with workforce recruitment and retention. All types of home care providers are struggling with worker shortages. The Department's methodology for ARPA funds distribution in this program will assist only the largest, causing a workforce shift that will not only disrupt employment, but will confuse patients.

The **Workforce Transportation Incentive** will certainly help with workforce growth in rural and suburban areas. This assistance cannot come soon enough, and yet the Department has yet to release details regarding the implementation of this important program.
HCP is cautiously optimistic about the inclusion of the **Advanced Training Incentive Program for HCBS transitions** to home in the state's FMAP spending plan.

Previous attempts to raise the skill level and responsibility of properly trained home health aides have floundered in practice. While laws and regulations have been passed which establish a profession of *advanced home health aide*, no funding has ever been appropriated to pay for these services. Here is an exciting, necessary advanced career path for an entry level health care worker that is languishing because of a lack of financial commitment from the state.

Other Obstacles for Home Care Providers

HCP would be remiss if we did not call attention to some of the other significant policy initiatives and regulatory constraints that are impacting home care today. Some are a direct result of the pandemic and some have been brought into the spotlight because of the public health emergency. All are factors which severely threaten the availability of care in the home for New Yorkers.

HCP repeats, as it has during all of its advocacy throughout the public health emergency, that home care providers were experiencing significant fiscal stress leading up to the COVID crisis. Given this fragile condition pre-COVID, we expect the current and future economic impact of the COVID-19 pandemic on the home care industry to be increasingly debilitating without serious fiscal and policy support from policy makers.

Safety-Net Benefit Needs of Home Care Workers

A unique situation facing home care workers and the agencies employing them is that in many cases workers themselves are recipients of Medicaid benefits. This can have the effect of limiting the income a home care worker can earn in order to maintain his or her Medicaid benefits. This is an important symptom of a problem facing New York and its home care system, especially as it relates to increasing wages.

In this circumstance, when wages are increased it can have the effect of home care workers decreasing the number of hours they work in order to maintain their own eligibility for Medicaid and other safety net benefits. This in turn results in the need for additional workers at a time when the system is facing a recruitment and retention crisis.

This is not to say that home care workers should not be paid well. Quite the opposite, as discussed above. This means that policy makers must take a comprehensive look at the home care, Medicaid, state safety net benefits, and appropriate reimbursement rates all in concert with each other, rather than looking at each in isolation.

CDPAP RFO

Home care agencies are still grappling with the fallout of the long-awaited, and extensively delayed, Department of Health announcement of contract awards for Fiscal Intermediaries (FI) working in the Consumer Directed Personal Assistance Program (CDPAP).

HCP has continually urged the Department to postpone any action on the CDPAP Request for Offers (RFO) until after the pandemic has resolved. Doing so would humanely provide certainty and stability for consumers, their families, personal assistants and providers. The concerns with this RFO are evident from its discussion and subsequent revisions during the budget talks last year. This RFO process continues today with no certainty nor end in sight.

This seemingly uncoordinated, opaque, piece-meal policy-making negatively affects untold numbers of consumers, personal assistants, and Fiscal Intermediaries, further fueling a health care crisis of the Department's own making. We urge you to seek a remedy that ensures continuity of care and stability in the CDPAP sector.

LHCSA RFO

Not unlike the CDPAP RFO, a prior year's budget authorized the Department of Health to launch a LHCSA RFO process. It is important to point out that such a process was scored in the budget as saving the state nothing. This year the Executive proposal scores the savings at $25 million, although nothing has changed within the proposal.

It makes little sense to pursue a LHCSA RFO process. LHCSAs must be licensed by the Department of Health before serving patients and are highly regulated. If the Department is intent on consolidating the LHCSA marketplace it must announce a clear procedure for that to happen. Instead, the Department has prevented consolidation by taking inconsistent approaches with respect to how providers can merge with or acquire other agencies.

Moreover, the Department has at its disposal a trove of data from Cost Reports, Statistical Reports, LHCSA registrations, and provider compliance surveys to make decisions about responsible and efficient home care providers. Using this data is likely a fairer and more objective way to determine which providers should continue as Medicaid participants.

The doubts, instability and uncertainty experienced throughout the CDPAP RFO process are strong predicters of what a LHCSA RFO process will be. That is to say, we anticipate a process fraught with delays, revisions, uncertainty and upheaval for providers and patients alike.

Regulatory delays aside, the LHCSA RFO will serve to severely limit the number of providers in the home care sector. No longer will Medicaid beneficiaries be free to choose a local provider, a provider who speaks their language or understands their cultural needs, or to simply stay with the one that has served them for years. The result will be additional employment shifts and patient disruption.

HCP in the strongest terms possible urges the repeal of the LHCSA RFO process from statute. We ask the legislature to join us in working to stop such a dismantling of this severely under resourced, but sorely needed industry.

MLTC RFO

And now, the home care industry is threatened with additional upheaval through the Executive budget proposal regarding yet another competitive procurement process. The Governor's plan would require the Department of Health to reduce the number of managed long-term care plans (MLTC), including integrated Medicare/Medicaid plans and partially capitated MLTCs. The proposal limits the number to five (5) of each plan type in each region.

You can be certain that through consolidation of the plan offerings, the remaining MLTCs will gain much power. Rate negotiations with providers will be virtually non-existent, as they will be forced into take-it-or-leave-it terms in order to continue to provide services to established patients.

Regulatory Relief is Needed

When discussing workforce development, it's important to understand the strain on workers imposed by regulatory requirements. That strain has been exacerbated by worker shortages, leaving current home care providers on the brink of complete burn out.

Reducing the administrative burdens on providers means they are better able to do what they do best: caring for their fellow New Yorkers.

The Executive Orders issued by the prior administration helped home care providers concentrate on providing care. The easements were often small, yet yielded significant results in administrative and supervisory reductions for home care providers.

Specifically, HCP asks that the following policies be considered for permanence:

- **Initial Health Assessments** Allow a registered nurse to conduct the initial health assessment for new employees.
- **Annual Employee Health Assessments** Allow RN assessments and use of telehealth.
- **Patient Health Assessments** Allow the use of telehealth.
- **Supervision of Personal Care Services** Allow for a hybrid telehealth mechanism for supervision.
- **PCA and HHA Training Programs** In addition to allowing online training, change approval for PCA and HHA Training Programs from 3 to 6 years. This will reduce redundant application processes and save costly administrative application submissions.
- **Alternate Competence Demonstration Timeframes** Continue permanently lengthening look back timeframes to three years to address workforce shortage issues.
- **Aide In-Service Training** Align Title 18, 505.14 (3 hours semiannually) with Title 10, 766.11 (6 hours annually). Recommend that enforcement discretion of these requirements be aligned with Federal timeline. Allow remote learning; do not require "catch-up hours" post-pandemic.
- **Home Care Aide Training Program** Continue and recommend changing the timeline for completion from 60 days to 120 days to accommodate workforce needs moving forward.

- **Out-of-State Health Professionals** Continue. The credentialling of out-of-state RNs is taking more than 8 weeks currently. This lengthy timeframe negatively impacts the ability of providers to recruit and place nurses on staff. Recommend at least an interim license provision to allow professionals ease in working in NYS.
- **Agency Remote Operations** Allow permanently.
- **Home Care Worker Registry Entries** Extend to 30 days.
- **Survey of Compliance** Allow self-reporting and on-line survey completion as other states have adopted to reduce administrative burden on both providers and the State.

Through the use of technology and training programs, the state's caregivers will have greater job satisfaction while still maintaining regulatory compliance and excellent services.

Conclusion

Our members could not be prouder of the work they and their staff do on a daily basis to help our frail, elderly and disabled citizens.

Home care providers, workers, and those who depend on them cannot, should not, and will not be overlooked.

The time is long past due to invest in, bolster and plan for the future of the home care workforce in New York. Now is the time to match the efforts happening in Washington, DC, not the time to add more upheaval and uncertainty to the home care industry, as the state is on a course to do with budget ambivalence coupled with ambiguous policy changes and regulations.

Individuals with disabilities, those with chronic illness and the elderly want access to be cared for in their homes. Many of the difficulties experienced by home care agencies cannot be resolved without State investment to address critical work force issues. Moreover, investments in home care must include meaningful and demonstrable steps to show this essential workforce how very valuable it is.

One thing is clear: home care is the setting of choice for those needing services. COVID has shown this more acutely with residents in congregate care settings leaving to go home or wishing to do so, if only they had the appropriate resources to procure the support of the home care industry. Data from certain counties indicates that the COVID mortality rate for home care recipients is a small fraction of what it is for nursing homes, or even private residences, and less than half of what it is for assisted living facilities. Patients do better at home.

As with the advanced home health aide services program and the data collection practices imposed on the industry, it is troubling that no conclusive results from past state policies have been released publicly or shared with the industry. Yet new policies continue to be imposed that have great potential to harm the industry and reduce access to crucial care New Yorkers need.

HCP emphasizes that home care providers have not had an increase in their basic costs or a trend factor in ten years or more. Reimbursement rates for the living wage and minimum wage increases do not cover all of the expenses of paying for these mandatory labor costs. The industry is financially unsustainable without State measures to preserve it.

HCP recommends a comprehensive look at issues related to providing a career path for home care aides, while at the same time providing enhanced reimbursement for home care worker advancement, longevity, and training. The State might also examine how comprehensive immigration reform would impact and may benefit the home care system.

Thank you for this opportunity to comment on the development of the home care workforce. HCP looks forward to working with the State Legislature to address the critical needs of the home care industry across the State in order to ensure access to high quality home care services.

The time is now for New York to invest in home care. This investment must be fair, transparent, and focused on the workers who are the foundation of the home care system.