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**Testimony of United Neighborhood Houses  
Before the New York State Assembly and New York State Senate  
Joint Legislative Public Hearing on the FY 2022-FY 2023 Executive Budget  
Topic: Health**

**Assembly Committee on Ways & Means, Assemblymember Helene Weinstein, Chair  
Senate Committee on Finance, Senator Liz Krueger, Chair**

**Assembly Committee on Health, Assemblymember Richard Gottfried, Chair  
Senate Committee on Health, Senator Gustavo Rivera, Chair**

**February 8, 2022**

Thank you for the opportunity to testify on the FY 2022-2023 Executive Budget and Health. United Neighborhood Houses (UNH) is a policy and social change organization representing 45 neighborhood settlement houses that reach 765,000 New Yorkers from all walks of life.

A progressive leader for more than 100 years, UNH is stewarding a new era for New York's settlement house movement. We mobilize our members and their communities to advocate for good public policies and promote strong organizations and practices that keep neighborhoods resilient and thriving for all New Yorkers. UNH leads advocacy and partners with our members on a broad range of issues including civic and community engagement, neighborhood affordability, healthy aging, early childhood education, adult literacy, and youth development. We also provide customized professional development and peer learning to build the skills and leadership capabilities of settlement house staff at all levels.

This testimony will focus on the home care workforce, with a focus on the economic crisis facing nonprofit home care providers due to State funding and policies that perpetuate near-poverty wages. New York must take urgent action in the FY 2022-2023 State Budget to stabilize the home care sector and fairly compensate its workforce.

**Settlement Houses**

Three UNH member organizations provide nonprofit home care services to their communities as state licensed home care services agencies (LHCSAs): Chinese-American Planning Council, St. Nicks 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. While the home care industry is comprised of both for-profit and nonprofit home care agencies, these community-based organizations serve distinct roles. They 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.

As multi-service nonprofits, these programs operate on lean budgets and struggle to maintain fair home care wages given reimbursement rates and State policies. For years, these organizations have been advocating together on behalf of the sector, ensuring the State does not pit home care workers and employers against one another and instead reform unfair State funding and policies.

### **Importance of Home Care**

According to federal studies and modeling, over half (52%) of Americans turning 65 today will develop a condition serious enough to require long-term services and supports.<sup>1</sup> There are also over a million New Yorkers with disabilities, chronic illnesses, or other complications that require direct long-term care. With such a significant population of New Yorkers that will require long-term care to age with dignity, it is in the State's best interest to ensure these services are as appropriate and sustainable as possible.

Direct care in homes and communities is either provided by unpaid family caregivers, paid family caregivers, or home health workers through an agency, the latter which is the focus of this testimony. New York's home care employees work tirelessly to help older adults and people with disabilities and chronic illnesses who require assistance with daily activities. Home care allows vulnerable community members to remain living at home with dignity and high-quality individualized care, which the vast majority of individuals prefer over being sent to institutionalized settings such as nursing homes. Home care is also generally more affordable than institutional care. Further, many immigrant seniors and families prefer home care because they can receive language-accessible and culturally competent care that they would not find in institutionalized settings.

With the demand for home care increasing, and with the nursing home crisis in New York that escalated during the COVID-19 pandemic, 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.

### **Industrywide Workforce Challenges**

As the State's population continues to age, the need for long-term care is growing rapidly. Projections show<sup>2</sup> that the number of New Yorkers age 65 and over is expected to grow by nearly one million from 2016 to 2026, and by another half a million from 2026 to 2036 – to about 4.5 million by 2036. As the population grows, the need for long-term care and the long-term care workforce will also grow.

The home care sector currently employs hundreds of thousands of people in New York, and by 2025 the sector is expected to see a 33% growth in demand and a net workforce shortage of 23,000 workers.<sup>3</sup> This shortage is in large part due to a systematically underpaid workforce comprised largely of women of color and immigrants. Home care workers had a median pay of \$28,750 in 2020,<sup>4</sup> with an estimated one in four workers living below the Federal poverty line, making them some of the most economically disadvantaged employees in the State.

These poor wages are predominantly due to State policies including low Medicaid and MLTC reimbursement rates and the NYS Department of Labor's "13 hour rule" of 13 hours of pay for a 24 hour work shift. Nonprofit home care providers in particular are stymied by these policies, unable to pay the fair wages they know their workers deserve due to a lack of funds. These economic policies

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<sup>1</sup> <https://aspe.hhs.gov/basic-report/long-term-services-and-supports-older-americans-risks-and-financing-research-brief>

<sup>2</sup> <https://pad.human.cornell.edu/counties/projections.cfm>

<sup>3</sup> [www.mercer.us/our-thinking/career/us-healthcare-labor-market-interactive-map.html](http://www.mercer.us/our-thinking/career/us-healthcare-labor-market-interactive-map.html)

<sup>4</sup> <https://dol.ny.gov/labor-data#31-0000>.

were especially insulting as the home care workforce and providers navigated the COVID-19 pandemic, continuing to provide services despite fearful workers and clients and rapidly-changing state guidance.

### ***Medicaid Challenges***

Home care is funded substantially by government payors, with the State's Medicaid program representing 87% of home care and personal care services,<sup>5</sup> including through managed long-term care plans (MLTCs). Exacerbating the sector's 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, making it extremely difficult for providers to compensate their workers adequately or competitively when faced with unfunded regulatory mandates.

Medicaid itself is a significantly underfunded State program, with many health care services competing for limited funds that under State rules are only permitted to grow by a certain percentage tied to the medical inflation rate each year under the Global Cap. Further, as mass unemployment swept our State throughout COVID-19 and people were forced to give up their employer-sponsored healthcare, hundreds of thousands more people enrolled in Medicaid<sup>6</sup>, putting even more strain on the system. Finally, before COVID-19 hit in early 2020, former Governor Cuomo tapped a second Medicaid Redesign Team (MRT II) to propose additional cuts to the Medicaid program to save money. This included a 1% across-the-board cut to home care agencies that went into effect in the FY 2020-21 budget, which was especially painful for nonprofit providers.

### ***The 13-hour rule***

The New York State Department of Labor (DOL) has established that residential home care employees who work for 24 hours shifts can only be paid for 13 of those hours in most cases, with the remaining hours exempt and intended to be reserved for sleep (8 hours, 5 of which must be uninterrupted) and meals (3 hours). In practice, many 24-hour shift workers are frequently interrupted by their patients' various needs, with work stretching throughout the night and rarely affording real meal or sleep breaks. 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 providers to obtain additional reimbursement from their insurance plans.

This "13-hour rule" also sets Medicaid reimbursement rates, so providers who want to pay workers fairly for the full 24 hours must find 11 hours of pay in their own budgets. For many home care providers, especially those that are nonprofit organizations on lean budgets, this is impossible. This means that employees often end up doing more than 13 hours of work for only 13 hours of pay. While less than 10% of home care workers currently work 24-hour shifts (at least in UNH's network), the 13-hour rule remains a leading contributor to the poor pay scales for 24-hour home care workers.

### ***Legal Challenge to the 13-Hour Rule***

In 2017, a series of State court decisions 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.

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<sup>5</sup> <https://hca-nys.org/wp-content/uploads/2019/02/HCA-Financial-Condition-Report-2019.pdf>

<sup>6</sup> <https://medicaidmattersny.org/wp-content/uploads/2021/04/global-cap-MMNY-statement-4.6.21.pdf>

If the courts ruled in favor of the plaintiffs and the 13-hour rule was abolished, providers would have been responsible for approximately \$1 billion per year across the industry in new payroll costs, without any mechanism to compel insurance plans or the state to help cover the costs. For nonprofits that rely on Medicaid reimbursement rates, this was a devastating prospect, with many fearing bankruptcy and organizational closure. 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.<sup>7</sup> While the legal door is not completely closed, providers were able to breathe a small sigh of relief that they would not immediately be faced with the prospect of bankruptcy. However, especially for nonprofit providers who serve community members and seek to promote social justice, a decision that perpetuates near-poverty wages is not one to celebrate. Now, with the lawsuits settled, nonprofit providers are demanding fair pay for their workforce from the State.

### **UNH History of Advocacy**

United Neighborhood Houses and our members have been raising alarm at the crisis in the home care industry for many years, advocating to Legislators, the Executive, and agencies for reforms that will enable workers to be paid fairly without bankrupting nonprofit providers. This advocacy continued even as these nonprofits were awaiting the results of lawsuits that could have resulted in financial catastrophe for them. Despite the fear of bankruptcy, these organizations lobbied for fair pay and just working conditions for the home care workforce, knowing that ultimately the workers and nonprofit employers had the same goals.

Our members continue to advocate for the sector. In mid-2021, they joined together with a broader coalition of about a dozen nonprofit homecare providers based in New York City to support the sector, known as the Community-Based Home Care Workgroup. The group is working to develop new models of community-based home care that make financial sense for nonprofit organizations, including creative ways to share resources, innovate through technology, and advance a policy platform, the latter which is available [here](#).

### **FY 2022-2023 Executive Budget and Recommendations**

While the former Governor's Administration seemed to recognize the problems in the sector, there was a disappointing lack of urgency on their part toward both the homecare compensation issue, and the broader need for sustained attention to and investment in the state's long term care system. We have not seen any notable investments in this program in the last several years, even though advocates and providers have been highlighting crucial funding issues.

We are encouraged by Governor Hochul's public statements in support of the homecare workforce and some of the investments included in the Executive Budget, including the \$10 billion investment in the overall healthcare workforce, the one-time bonus for home care workers, the reversal of the 1% Medicaid reimbursement cut from 2020, and changes to the Medicaid Global Cap. However, we cannot solve the home care workforce crisis without deeper investments in salaries.

UNH offers the following recommendations for the FY 2022-2023 Budget to stabilize and strengthen the home care workforce while ensuring nonprofit providers are able to remain financially viable. These

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<sup>7</sup> *Andryeyeva v. New York Health Care, Morena v. Future Care Health Services, and Tokhtaman v. Human Care*

solutions require significant 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. Given the State's positive economic outlook, now is the time to invest.

### ***Eliminate the Medicaid Global Spending Cap (S.5255/A.226)***

Any significant home care pay reform will require additional funding and Medicaid support. This cannot happen without increasing or eliminating the Administration's policy of a Global Cap on annual spending increases that is tied to medical inflation rates. While it is encouraging that the Executive Budget proposes a major adjustment to the cap, it is prudent to consider longer-term solutions including eliminating the cap entirely, which can be accomplished through S.5255 (Rivera) / A.226 (Gottfried).

### ***Support and Fully Fund Fair Pay for Home Care (S.5374A/A.6329A)***

UNH supports S.5374A (May) / A.6329A (Gottfried), the Fair Pay for Home Care bill, which would ensure home care workers are paid uniform and fair wages across the State. This bill would establish a base wage for home care workers at 150% of the regional minimum wage, whether that wage is set by statute or a wage order, and requires annual adjustments via the Department of Health. Critically, the bill includes a funding mechanism by establishing the Fair Pay for Home Care Fund and subsidizing Medicaid payment rates when necessary. This will ensure pay rates are funded through reimbursement rates and do not unfairly fall on providers. This bill has been estimated to cost approximately \$4 billion and must be added to the FY 2022-2023 Budget.

Fair Pay for Home Care is ultimately an economic development program. A recent report from the CUNY School of Labor and Urban Studies found that this legislation would create 20,000 additional home care jobs per year for the next decade, create nearly 18,000 new jobs within local businesses due to the increased spending capacity of these home care workers, and result in net economic gain of billions of dollars for the State.<sup>8</sup>

### ***Support Split Shifts (S.359A/A.3145A)***

UNH supports S.359A (Persaud) / A.3145A (Epstein), which would cap home care worker shift hours at 12 hours in most cases (informally known as split shifts). This bill seeks to rectify the unfair pay structures that result from the Department of Labor's 13-hour rule by capping the number of hours an employer can require a home care worker to work at 12 hours, with a cumulative limit of 50 hours of work per week (shorter shifts would also be permissible, such as 8 hours). There are limited exceptions to go over this cap, with clear worker protections added for these cases including an anti-retaliation clause and a right to civil action for law violations. The bill would massively reduce if not eliminate the number of 24-hour shifts, and it should be included in the Executive Budget.

Industrywide estimates to cover existing 24-hour cases for 24 hours of work have been cited at an additional \$1-1.2 billion at current wage levels, and this figure could be similar for split 12-hour shifts, even with the likelihood of reduced overtime hours. Much like Fair Pay for Home Care, this bill would have dramatic unintended consequences for providers if it is not funded through the budget.

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<sup>8</sup><https://static1.squarespace.com/static/58fa6c032e69cfe88ec0e99f/t/6022ae8312cfd1015354dbee/1612885635936/Executive+Summary+CUNY+REPORT.pdf>

Notably, the bill requires more workers to fill the split 8- or 12-hour shifts which are currently filled by one 24-hour worker, yet there is nothing in the bill to encourage the creation or retention of these jobs. We are already at a point of a pending workforce shortage, and without attention this bill could exacerbate the problem. This is why this bill is not workable unless it is paired with Fair Pay for Home Care and other legislative proposals to address the workforce crisis. Finally, the bill should allow additional flexibility for those clients who would benefit from a consistent, 24-hour aide, like those with dementia or complex care regimes, while ensuring those employees are paid for the full 24 hours of work. This bill must find balance to support both employees and clients.

Broadly, UNH strongly supports ending the DOL's 13-hour rule, ensuring that home care workers are paid for every hour they work even if it means 24 hours in a 24 hour shift (though we prefer more split shifts and strongly oppose mandating employees to work 24-hour shifts), and reforming strict Medicaid reimbursement practices. Unfortunately, the Departments of Labor and Health have to-date been unwilling to proactively implement these reforms, and as a result we must turn to creative legislative solutions.

### ***Data Collection and Evaluation***

When UNH met with the State Department of Health and Medicaid Director to discuss challenges from the 13-hour rule in 2019, we were faced with numerous requests for data, most of which UNH and our three nonprofit LHCSAs were unable to answer precisely, and certainly not to represent the full industry. However, we agree that good, transparent data is the foundation for successful policy outcomes, particularly when the State budget is at play. Examples of this data could include: number of clients served, number of employees, number and percent of 24-hour cases, changes in these numbers over time, employee retention and turnover rates, average length of staff vacancies, and disaggregated data by nonprofit and for-profit agencies and size of agencies. This data, if made publicly available, would help quantify budget needs and evaluate the impact of policy changes.

While industry trade associations and think tanks could fill this role, the State should explore ways it can support data collection efforts in order to inform better policy outcomes. This should include budgetary support for data collection, either to these external organizations or to the Departments of Health and/or Labor. DOH and DOL should be well-equipped to collect and evaluate such data, since they already have access to much of it and would simply need to audit and analyze it, and perhaps consider alternate data collection requirements and mechanisms. The Legislature could require such data collection and evaluation through legislation if a regulatory approach is not successful.

### ***Industrywide Oversight***

In order to determine best practices for the industry moving forward, the State should establish a Public Home Care Advocate's office to act as a liaison and resource hub for employees, employers and home care recipients as well as to determine what long-term care should look like. The office should develop and 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. It should examine issues of compensation, 24-hour care, benefits, scheduling, unpaid and family caregivers, the anticipated workforce shortage, career ladders, and other critical issues. The office should work in partnership with and be informed by 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.

### ***Fund Certification and Enhanced-skills Training***

A home care workforce begins with required training and certification of eligible workers to fill PCA, CNA and HHA positions. New York State must fully fund HHA certification training to proactively build a pipeline of eligible workers to enhance recruitment efforts. Enhanced-skills training must be added to create a career ladder with the ability to increase skills and earnings to retain and incentivize home-based workers. Enhanced-skills training must be culturally and linguistically appropriate and should include disease specific interventions (Alzheimer's, diabetes, etc.), use of technology, other specialized skills, preceptor and mentoring programs to help recruit new workers into the field. Workers should be incentivized to complete additional training by compensating them for participation in required training and certifications. Notably, many nonprofit home care providers already operate such training programs but are limited because they are not funded by government sources.

### ***Pass the New York Health Act (S.5475/A.6058)***

The New York Health Act would provide universal long term care coverage, allowing for coverage of true care needs and providing the opportunity to assess cost-savings through expanded coverage. The Legislature should pass S.5474 (Rivera) / A.6058 (Gottfried).

It is easy to think of any pay disparity issue as the employer versus the employee, but that misconception is exactly what allows New York to continue the current unjust system. Without taking action in the FY 2022-2023 Budget, the State will perpetuate a system that pits nonprofit home-care providers and their employees against one another. Without State intervention, the existing home-care workforce shortage will accelerate and thousands of elderly and disabled clients will be left without care or forced into institutional settings. The State must stand with both workers and providers to ensure they can continue to work together to provide quality care to the most vulnerable New Yorkers.

Thank you. To follow up, please contact me at [tklein@unhny.org](mailto:tklein@unhny.org).