



November 19th, 2021

New York State Legislature
Legislative Office Building
Albany, New York 12248

Dear Senate Majority Leader Stewart-Cousins and Assembly Speaker Heastie,

We are writing to request your intervention in converting 24-hour home care shifts assigned by NYS Department of Health to Chinese-American Planning Council Home Attendant Program Inc. (CPCHAP) to 12-hour split shifts, and your support in passing legislation to end 24-hour live-in shifts (A3145A Epstein/S359 Persaud) and raise home care worker wages (A6329 Gottfried/S5374 May).

As you know, currently the NYS Department of Health, via Medicaid funding through the NYC Human Resources Administration and Managed Care Organizations (MCOs), assigns 24-hour live-in care for clients with acute needs. However, according to the NYS Department of Labor, Medicaid only pays for 13-hours of these shifts, assuming eight unpaid sleep hours and three unpaid meal hours. While this rule was contested, it was ultimately [upheld by the New York Court of Appeals](#) in 2019, which reaffirmed the current Department of Labor standard of the “13-hour rule.”

The 13-hour rule, or only paying for 13 hours of a 24-hour live-in shift, is unsustainable and unfair to home care workers, who deserve to be fully compensated for every hour in their clients' homes. **CPCHAP is in full support of ending our 24-hour shifts and providing two 12-hour split shifts going forward and would do so ourselves if we could; however, despite our best attempts, we have been unsuccessful because of State policies and Medicaid regulations.** CPCHAP is a non-profit, 100% Medicaid-funded home care agency, which means we are subject to Medicaid rates, rules and regulations. This means that we must accept 24-hour home care cases when assigned by Medicaid vis-a-vis NYC Human Resources Administration (HRA) or Managed Care Organizations (MCOs), and we are only able to pay the 13-hours that Medicaid reimburses. No funding source exists for the remaining 11 hours, and it could constitute Medicaid fraud if we attempted to split shifts without Medicaid authorization, even if the funding did exist.

To do what we can to mitigate this unacceptable situation, CPCHAP is actively avoiding taking any new 24-hour live-in cases, but State Medicaid requirements as well as HRA and MCO contracts mean we must accept the type of cases for which these State organizations authorize the patient and ultimately assign us. There is no ability to negotiate or deliberate regarding the classifications that come to us from HRA or MCOs, although we can appeal for a different case assignment, which we already do. We also cannot simply close our existing 24-hour live-in cases because of these requirements as well as the Patient's Bill of Rights -- not to mention we obviously feel a responsibility to these vulnerable patients and their families who would be left without care if their cases were to be dropped. If another home care agency was willing to take our 24-hour cases we could transfer them, but most agencies are, similar to CPCHAP, avoiding new 24-hour live-in cases. And, of course, ultimately none of this “chess-playing” solves the problem because - it would simply shift the responsibility to another home care agency. It is solely in the hands of the State to designate a different type of shift (like a 12-hour split shift).



The fact that CPCHAP is eager to eliminate 24-hour shifts and only offer 12-hour split shifts but is powerless to do so ourselves is precisely why we have been [advocating](#) for the legislation to convert 24-hour shifts to 12-hour split shifts (A3145A Epstein/ S359 Persaud), and why we have encouraged other home care agencies with 24-hour live-in cases to do the same. As you know, there are 11,000 of these 24-hour live-in cases across the State, and CPCHAP has 54 of these cases (or 0.5%). It is estimated that it would cost approximately \$1.1 billion in Medicaid funding a year to compensate for the remaining 11 hours for all those cases. There are no options for us to end existing cases, retroactively compensate the 11 hours per shift that the State does not reimburse for, or provide 12-hour split shifts, other than State level intervention. If home care employers were to try to do this without State adjustment of rates, it would cause full collapse of the Medicaid-funded home care industry, which would still not provide retroactive compensation to home care workers and would instead leave workers without jobs and patients without care.

Since our leadership transition in 2017, CPC has been advocating on this issue to push for change on the State level to end 24-hour cases, ensure fair wages for home care workers, and adequate care for all who need it. We joined United Neighborhood Houses and other settlement houses with 24-hour cases on [advocacy days](#) starting in 2018 to meet with State legislators and the Governor's Office, including securing a budget letter from Assembly Member Yuh-Line Niou requesting that the State enact split shifts and fund full compensation. Since our [first State Advocacy Day](#) in 2019, ending 24-hour shifts and providing fair wages for home care workers have been a core part of our State agenda. We have testified at hearings ([2018 Department of Labor Hearing](#), [2018 Assembly Aging Committee Hearing](#), [2019 City Council Home Health Oversight Hearing](#), [2020 Medicaid Redesign Team Hearing](#), and [2021 Senate Aging Committee Hearing](#), among others) and spoken on BPHA Caucus Weekend Panels led by Senate Majority Leader Andrea Stewart Cousins and Assembly Member Niou ([2019](#)) and Assembly Member Ron Kim ([2021](#)). We have also uplifted the issue through media (some examples including [the Gothamist](#), [City Limits](#), [Labor Press](#), and [Gotham Gazette](#)) and rallies (including speaking at Assembly Member Kim's press conference during which we called out [State support of megacorporations](#) to the detriment of home care workers). However, we know that our advocacy alone cannot solve this issue, and we have been calling on other home care agencies to join our efforts.

Please know: CPCHAP has taken every measure within our power to address this issue and compensate our workers. When a home care worker on a live-in case indicates a preference for a 12-hour or shorter shift, we absolutely work to honor those requests to the extent the caseload and assignments allow, although unfortunately this is limited by the cases the State assigns us. For our existing 24-hour live-in cases, while many agencies do not automatically compensate for interruptions during the 11-hour break period, CPCHAP has implemented a system to monitor and compensate for all interruptions that is in line with the 2019 Court of Appeals decision. In fact, **last fiscal year, CPCHAP spent \$2.7 million that was NOT reimbursed by Medicaid** to pay for interruptions, overtime, transportation, PPE, and training to home health aides. On average, our home care workers have been with CPCHAP for 5-10 years, and 80% of our workers have been employed by other home care agencies and report that they are highly satisfied with CPCHAP because we reimburse for time that other agencies do not. All of our home care workers are represented by 1199 SEIU, which has a grievance process for any claims of incorrect compensation to workers by home care agencies. We believe that a pending arbitration between 1199 SEIU and 40+ home care agencies will at least begin to address some of these issues, but we need to fix the home care system at its core going forward. As a CPCHAP home care worker with 24-hour shifts involved in the 1199 SEIU arbitration [has said](#), "We need help from the state legislature to make the 24-hour workday illegal."



Immediate action must be taken for our home care workers. While we have been unsuccessful securing 12-hour split shifts for all of our 24-hour cases (we have had them granted for some), we also know that legislators have been successful in effectively intervening with a State agency when a contracted provider has been unsuccessful. **We request that you leverage the power of your office to intervene with the New York State Department of Health (DOH) Medicaid Division, NYC HRA, and MCOs on our behalf to request and secure authorization for 12-hour split shifts for our existing 24-hour live-in cases.** We also understand that the above efforts still do not solve the root issue of 24-hour live in cases, which is why we have been advocating for legislation to ensure that 12-hour split shifts become the standard. We have also been advocating for Fair Pay for Home Care (A6329 Gottfried/S5374 May) because in addition to fair schedules, our home care workers need living wages that reflect this highly important work, and begin to address the home care workforce shortage.

We are grateful for your support in addressing our existing 24-hour live-in cases, as well as your ongoing leadership to reform the home care system to benefit workers and patients alike. We are committed to continuing this work with you, and thank you for your advocacy.

Please feel free to contact me at (212) 941-0920 x 143 or who@cpc-nyc.org for additional information.

Sincerely,

Wayne Ho
President and CEO

CC:

State Senator Jabari Brisport, Chair of Committee on Children and Families
State Senator Rachel May, Chair of Committee on Aging, Lead Sponsor of S5374
State Senator Roxanne Persaud, Chair of Committee on Social Services, Lead Sponsor of S359
State Senator Jessica Ramos, Chair of Committee on Labor
State Senator Gustavo Rivera, Chair of Committee on Health
Assembly Member Harvey Epstein, Lead Sponsor of A3145
Assembly Member Richard Gottfried, Chair of Committee on Health, Lead Sponsor of A6329
Assembly Member Andrew Hevesi, Chair of Committee on Children and Families
Assembly Member Latoya Joyner, Chair of Committee on Labor
Assembly Member Ron Kim, Chair of Committee on Aging
Assembly Member Linda Rosenthal, Chair of Committee on Social Services