



TESTIMONY

New York State Association of Health Care Providers

Kathy Febraio, President and CEO

Submitted to the Joint Legislative Hearing on the
Impact of COVID-19 on Health Care Facilities and Long
Term Care Providers

About HCP

HCP is a statewide trade association representing the full spectrum of home and community-based care providers. Through a strong network of regional chapters and an active State office in Albany, HCP is a primary authority of the home health care industry.

Home care. Health care. Your care . . . for life.®

INTRODUCTION

Thank you for the opportunity to share the experiences of the home care industry as we continue to face this unprecedented public health crisis and seemingly unending uncertainty and challenges associated with the adoption of policies harmful to the home care agencies, the patients served and the essential, but all too often forgotten, home care workers.

I am Kathy Febraio, the President and CEO of the New York State Association of Health Care Providers (HCP), which is a leading Home Care association in New York State representing Licensed Home Care Services Agencies (LHCSAs), Certified Home Health Agencies (CHHAs), and Fiscal Intermediaries (FIs) in the Consumer Directed Personal Assistance Program (CDPAP), all of which employ essential workers under the COVID emergency declaration.

BACKGROUND

Home care providers and aides are among the essential workers on the front lines in the battle against COVID. Home care is there caring for sick, elderly and vulnerable New Yorkers. Home care is keeping these New Yorkers from being admitted to hospitals or congregate care settings and caring for them after being discharged from these settings.

Home care, naturally being out in the community and with training in infection control, is a valuable resource that should not be overlooked. Now more than ever, home care is the health care provider that can provide essential relief to the currently, significantly overburdened health care system. But it needs to be recognized and treated as essential and given access to financial support and personal protective equipment (PPE).

Home Care Providers Respond to COVID-19

As COVID took root across the State, home care agencies experienced an almost immediate downturn in service hours – by as much as 20% -- as patients and their families cancelled services out of fear or because families in lockdown were available to provide care.

At the same time, home care agencies who were already reporting outstanding accounts receivables from managed long term care plans, in many cases in excess of \$1,000,000, began to experience a 10-20% slowdown in payments, adding financial challenges at a time when expenses were increasing dramatically:

- PPE costs jumped as much as 20 times what they had been.
- Overtime costs skyrocketed as aides became unavailable for work due to quarantine, fear, illness or child care issues.
- Decreased reimbursement from MLTCs.

Workforce challenges that were already impacting the industry became more apparent and more strained. Child care options evaporated at a time when essential workers needed them most, recruitment and initial training of aides came to a halt, and aides were recruited away from home care to work in other care settings.

Regardless, HCP and its members sprang into action to protect patients, workers and the community.

Our members responded to this crisis while facing a lack of resources and an uncertain future. Home care providers focused their time and energy helping patients, workers and their families that were fearful of contracting the virus. Home care providers made hand sanitizer, hired tailors to make masks, because they could not access PPE through regular commercial means and there were difficulties in obtaining them through the state's mechanisms. Providers were distributing two-week supplies of PPE to their aides in order to minimize the exposure by repeated encounters and repeated trips on public transportation.

Home care providers repeatedly gave training on infection control, stopping the spread, and appropriate donning, doffing, cleaning and storage of PPE. Providers communicated with aides by through multiple channels: mailers, texts, email, social media, telephone calls, with information and access to state and federal resources, communicated in multiple languages, created newsletters, videos and provided letters to aides to ensure they were recognized as "essential" when traveling to patients' homes.

HCP has members who arranged nurses' calls to patients, as often as three times per week to constantly assess and reassess how patients were doing and what resources were needed to keep them safely at home. Aides have the nurses' mobile phone numbers for 24-hour access to answer questions, troubleshoot and ensure patient health and safety.

Some providers made their human resources operations 24/7 to respond to the needs and concerns of aides.

In addition, we have providers that in order to support their aides, would provide a nurse onsite outside of the home of a COVID positive patient on the first visit to answer questions and concerns and ensure extra support for the safety health and comfort of the patient and the aide.

We also have members who used their Paycheck Protection Program money to provide aides with additional pay during this period in recognition of all that they do.

HCP, faced with members who were not able to access PPE, started a PPE group buying opportunity, obtained donations, distributed hundreds of thousands of pieces of PPE, and worked with other home care provider associations and the City of New York to ensure the industry received PPE in the most vulnerable region of the State.

All of this while often times being told home care is not a priority. Worse yet, being told home care is not essential! Home care was there all through this crisis. We continue to be there despite DOH's seemingly and unfairly dim view of this ever more necessary industry.

Our Recommendation

We ask for your support in the delay of the following new policies and programs that are inappropriate during a pandemic:

CDPAP RFO Decision

LHCSA RFO Release

New Cost Report

EVV and Aide Unique Identifier Coordination

Implementation of the DOH Per Member, Per Month reimbursement for CDPAP

We also ask for your support in expanding Telehealth opportunities and reimbursement opportunities for the same, allowing home care providers to provide initial training online, fair reimbursement from MLTCs, passage by both houses of PPE reimbursement legislation, and fair and urgently needed direct disbursement of federal funding once it is approved by Washington.

Obstacles for Home Care Providers

Prior to the onset of COVID-19 the home care industry was facing dire circumstances with significant uncertainty about rate cuts, lack of transparency in payments from MLTCs and delays in those payments, home care providers holding large dollar amounts in accounts receivables, and home care providers operating on razor thin margins.

Then came COVID-19 and an entirely new set of challenges, in fact, never before seen challenges, with patients refusing care due to being fearful, home care workers fearful for their own health and declining to come to work, and the significant challenge associated with access to and affordability of the newly competitive personal protective equipment (PPE) market forces. HCP repeats, as it had during its advocacy on the most recently enacted budget, 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 further debilitating without fiscal and policy support from policy makers.

As we sit here today, home care agencies are facing the long awaited and inexplicably often delayed Department of Health announcement of contract awards for Fiscal Intermediaries regarding the Consumer Directed Personal Assistance Program. This was a change enacted in the 19-20 State Budget. Applications were due on March 3 just before COVID really began to spread.

HCP has continually requested that the Department delay any action until sometime next year after COVID has resolved. This would provide certainty and stability for consumers, their families, personal assistants and providers, while avoiding a self-created totally unavoidable crisis. Instead DOH continued on a path towards announcing its decision on July 1. In the lead up to July 1, HCP again raised its concerns with the Department without response. Since that time in late June, the Department has delayed the announcement five weeks in a row as of Thursday August 6. This seemingly uncoordinated, opaque, piece-meal policy making affects untold numbers of consumers, personal assistants, and Fiscal Intermediaries further fueling a crisis of the Department's own making and leaving the industry facing continued uncertainty and instability.

Moreover, home care providers are facing a new and little explained LHCSA Private Pay Pilot Project, which raises numerous questions, implementation of Electronic Visit Verification and all of the steps leading up to it in January, a new complex home care cost report, due October 31, a LHCSA Statistical report, which is in many ways duplicative of the cost report, due in mid-November, new wage parity reporting requirements beginning October 1, a new and industry changing LHCSA RFP process to be launched in order for contracts to be approved by July 1, 2021, a LHCSA licensing moratorium that restricted how agencies could be sold and that officially ended on April 1 of this year, but that the Department has not explained or provided the new application process or even when the application document would be released.

These issues and others like them, will become acutely critical as we enter a post-COVID period. It is evident that it is the State's unspoken goal to dismantle the home care industry in toto. HCP has

been willing and able to engage in conversation, but has not been met with any meaningful opportunity to do so.

At this moment in history, home care is there. It is focused on providing care to those it serves while navigating COVID concerns. Faced with sporadic and unexplained delays, lack of answers, unclear timelines and decisions and /or the absence thereof that make little sense, **HCP urges the legislature to join us in stopping such a dismantling of this severely under resourced, but sorely needed industry.**

2020-2021 BUDGET IMPACT ON HOME CARE

The newly enacted NYS Fiscal Year 2020-2021 Budget includes many proposals significantly impacting the Home Care industry. As you know, given the ongoing and unprecedented COVID-19 crisis, this year's budget process was unlike any other ever seen. Consequently, as Assemblymember Gottfried and Senator Rivera have both publicly stated with respect to the health budget, home care was the program/policy area most negatively impacted in that portion of the budget. The negative impacts of the budget combined with those of COVID-19 will have extreme and long-lasting effects on the home care industry.

Home care providers and aides are among the essential workers on the front lines saving lives in the battle against COVID. Home care is there caring for sick, elderly and vulnerable New Yorkers. Home care is keeping these New Yorkers from being admitted to hospitals or congregate care settings and caring for them after being discharged from these settings.

FUNDING FOR PPE

Now more than ever, home care can provide essential relief to the currently, significantly overburdened health care system. But it needs to be treated as essential and given access to financial support and personal protective equipment (PPE) that others in the health care system have been given.

Home care needs ready access to PPE as it continues to struggle obtaining it through the regular supply chain. In this regard, HCP has submitted legislation to fund PPE for home care providers. The bill would require unspent funding paid by the state to MLTCs to be used to support PPE acquisition for home care workers to protect them and their patients from COVID-19.

HCP thanks and commends Assemblymember Gottfried and Senator Rivera for sponsoring this critically important bill. The bill [A.10451\(Gottfried\)/S.8361\(Rivera\)](#) – would help ensure home care workers can continue to keep the most vulnerable patients in their homes, protecting them and the public from the spread of COVID-19. The need for PPE for the protection of home care workers and their patients is paramount. **HCP is grateful for the Senate's recent passage of this bill. We urge the Assembly's passage and ultimately call on Governor Cuomo to sign the measure into law.**

FEDERAL FUNDING RELIEF

In addition, home care, specifically Licensed Home Care Services Agencies (LHCSA) need particular attention when it comes to financial relief. As a state created construct, LHCSAs do not have the same access to relief from the federal government that home and community based

providers have through Medicare. HCP has been advocating for funding in the next round of Federal relief so that relief is provided to LHCSAs through Medicaid. We are hopeful for relief for our sector, but when it comes to distribution of funding, **HCP urges the state to employ a mechanism that gives direct assistance to LHCSAs. HCP is concerned by any mechanism to distribute this funding that is similar to that which was used for the state's DSRIP program, which largely left home and community-based services out of the equation. Continuing this approach is patently unfair and must not be allowed given all that LHCSAs are facing.**

GUIDANCE AND STATE BUDGET RELIEF

In addition, on issues that will become acutely critical as we enter a post-COVID period, HCP is urging the sharing of information, guidance and feedback on key budget proposals and other impactful policies pursued prior to the onset of COVID. These issues and questions are detailed below.

Prior to the COVID crisis there was a substantial budget deficit that had to be dealt with. Obviously, the COVID crisis has significantly exacerbated the State's fiscal stability and contributes to seriously uncertain state finances.

Among these policies are those which HCP strongly opposes and is concerned by, as follows:

LHCSA Contracting under Medicaid

Newly enacted as part of the budget, is the requirement that LHCSAs wishing to continue to provide services in the Medicaid program will have to enter into a contract with the state under a process seemingly similar to the Consumer Directed Personal Assistance Program (CDPAP) Fiscal Intermediary (FI) request for offers (RFO).

With respect to this new LHCSA contracting process there are several questions that are arising and will continue to arise as the process develops. Based on the contracting process for Fiscal Intermediaries about which there were several hundreds of questions, HCP strongly urges a delay in the implementation of this proposal for one year, from July 1, 2021 until July 1, 2022, in order to better understand the impact COVID will have on the industry.

Moreover, whenever steps are taken to move forward with this process, HCP urges the Department to extend the 30-day timeframe within which to respond to the notice of solicitation for offers to no fewer than 120 days from the time the notice is published on the Department's website. In addition, HCP urges the Department to keep open the continuous recruitment process for at least one year after the first round of contracts is awarded.

Next, HCP is seeking clarification of the statutory language to determine whether LHCSAs providing services in the Nursing Home Transition and Diversion (NHTD), Traumatic Brain Injury (TBI) and other such waiver programs are subject to this contracting process.

Finally, there was mention during the CDPAP FI Workgroup process, the CDPAP FI RFO, and the MRT II process, of having adequate firewalls between LHCSAs and FIs in the instances where a single provider offers both services, however no real substantive discussion of these issues was ever had. It is truly unfortunate that there has not been an interest by the Department to have

such a conversation. The LHCSA/FI provider combination offers an optimum option to provide these services. LHCSAs are expert at patient care and have the best interests, safety and health of the patient or consumer as their focus. This arrangement brings with it a unique and valuable approach to continuity of care and patient safety. Something a stand-alone FI is not as well equipped to do.

We urge the legislature to join us in seeking a delay in the LHCSA contracting process until 2022.

Home Care Worker and CDPAP Personal Assistant Unique Identifier

With the new requirement that every home care worker and personal assistant have a unique identifier, HCP urges the sharing of the process, timeline and cost for providers to obtain such an identifier. Last year when it was proposed that every home care worker obtain a national provider identifier (NPI) it was estimated that such an undertaking would cost in the millions of dollars to achieve. HCP has further urged the Department to ensure that whatever the cost of providing such a unique identifier, such cost is reimbursed to providers by the State and done so in a timely way vis-à-vis the implementation of Electronic Visit Verification (EVV).

We urge the legislature to join us in ensuring that DOH explain and coordinate the deployment of the unique identifier in a timely way so as to make it efficient and cost effective given the rollout of EVV.

Electronic Visit Verification

As the Department has begun its roll-out of implementation of EVV and given the on-going COVID crisis, HCP urges the State to request of the federal government a further delay of EVV implementation until such time as the fallout of the COVID crisis is better known. **In addition, when EVV implementation does move forward, the financial assistance should be made available to providers who need such assistance with implementation of this new mandate.**

Consumer Directed Personal Assistance Program (CDPAP) – Request for Offers (RFO)

Since the onset of the COVID crisis, HCP understands that the State has necessarily and rightfully had to reprioritize and redeploy its resources to effectively respond to the crisis. Due to this and the detrimental impact that implementation of this policy would have at this time in history, HCP urges a delay in the awarding of contracts in CDPAP for one year until July of 2021 and would urge the legislature to join us in this request. To date, DOH delayed the announcement of contract awards four times for one week at a time. This adds a great deal of uncertainty to an already uncertain process.

HCP calls on the legislature to urge DOH to delay awarding contracts until 2022, until such time as the impact of COVID is better known. Failing that, HCP urges the legislature to join us in obtaining answers to why DOH is taking this piece-meal, unpredictable and crisis provoking way to administer such an important program.

Cost Reports

Similar to the CDPAP RFO, the cost report rollout had to be put on hold. As the Department moves forward with relaunching the cost report process, as the timelines for submission of the new cost report and the existing LHCSA statistical report and registration continue to more closely align now within days of each other, the Department must combine both reports into a single report. Doing so is the right thing to do and will be more effective, more efficient at a time when the State has put an extremely high value on provider efficiency, be a much better use of precious resources, and make compliance easier and more economical.

Alternatively, with all of the uncertainty and turmoil in the health care industry, and the home care industry, specifically, given new and existing contracting requirements, HCP urges the legislature to join us in requesting a delay in the new cost report such time as the industry stabilizes.

SOLUTIONS

PPE Reimbursement Legislation

In addition to the legislature sharing in HCP's messaging as has been urged in this testimony to assist the home care industry in flourishing at a time when the need for its services are significantly growing, HCP has also taken steps to ensure that home care providers are not left to whither.

First, as discussed previously, HCP urges passage and enactment of legislation to provide reimbursement for PPE. Moreover, amendments to this bill have been offered to expand the items that could be reimbursed to include COVID sick leave for home care workers. Such an amendment makes sense to allow providers to be reimbursed for the costs they have incurred during COVID.

It is critically important to note that the reimbursement that this bill contemplates would come not from new state funding, but from funds paid to MLTCs that are unspent due to members of MLTCs not being able to use all of the services offered to them. Based on estimates, MLTCs have amassed \$52 million per month in unspent premiums paid by the state.

This bill enjoys the broad support of the labor community and the provider community. It also comes at a time when some insurers are realizing increased profits.

Creating a Legacy of Care - Peer Mentorship Program

In May, Community Healthcare Services Foundation (CHC), an affiliate of HCP announced its partnership with the Iroquois Healthcare Association Workforce Investment Organization (IHA WIO) in launching Creating a Legacy of Care, a peer-to-peer mentorship program for home care workers in New York State.

The program, which has been implemented in both New York City and upstate New York, is designed to create a stronger connection and sense of belonging for home care workers who, by the very nature of the work they do, often feel isolated and disconnected from colleagues.

The program connects newly hired caregivers to their more seasoned peers who will provide guidance and support during the first 90 days of employment – the most critical time period for a new hire.

CHC is proud to provide a program that is needed now more than ever. Mentoring has a tremendous impact on both the mentor and the mentee, but most importantly it impacts the patients they care for. This program will have a multifaceted effect on the lives and careers of caregivers and will create a legacy of care for all those they care for throughout their careers.

Recruiting and retaining a qualified workforce is one of the biggest challenges in the home care sector. With the combination of an aging population and the high turnover in home care workers, the New York State Department of Labor is projecting the demand for home health aides to grow by more than 50% by 2025.

The Creating a Legacy of Care mentorship program focuses on job satisfaction, creating job growth opportunities, increasing the retention rate of direct caregivers working in the home, and offers a new tool to home care providers to recruit caregivers.

Remote Initial Training for Home Health Aides and Personal Care Aides

HCP, along with its colleagues in the home care provider world, the Home Care Association of New York State and Leading Age New York have jointly submitted to DOH a proposal to allow for home health aide and personal care aide initial training to be accomplished through virtual instruction with appropriate verification and in-person evaluation of skills.

As presented in this testimony, prior to the onset of the COVID-19 crisis, the home care industry faced significant challenges with respect to aide recruitment and retention. Recent turnover rates in the industry were reported at all-time highs of more than 60%. The COVID-19 pandemic has amplified the workforce challenges and severely limited the ability of providers to recruit and provide in-person training. In response to these challenges, the Associations have convened provider workgroups, comprised of providers that operate training programs, to develop the following proposal.

The Associations have respectfully urged the Department's adoption of this proposal, both now during the pandemic and permanently once the pandemic resolves, to alleviate long-standing recruitment and retention challenges experienced by the industry and those that have more acutely manifested as a result of the COVID-19 crisis. This would help modernize the industry and provide another useful tool to providers.

CONCLUSION

Prior to the COVID crisis home care providers struggled to get by, now with COVID and the State's draconian policies, fiscal and otherwise, adopted in this and recent years' budgets many of these providers are facing down the specter of how or if to continue operations. All of this, at a time when the need for our services is on the increase.

Home care providers need relief and assistance, not cuts and obstacles. This is especially true when given the aging demographic in New York and the expectation of the growth in the need for these important services.

Home care can and should flourish. We need the legislature's leadership and help to make that happen.

Appendix 1

Important Home Care Deadlines and Effective Dates

Event	Due Date/Effective Date	Status
CDPAP FI PMPM Rate Implementation	Notice of Proposed Rule Making Published December 31, 2020	Not yet adopted
Two-Year LHCSA Licensing Moratorium	Expired April 1, 2020	No Announcement of New Process – No New Application Released
LHCSA Certificate of Need Rule	Effective April 1	New Process not yet announced
CDPAP RFO Contract Award Announcement	Anticipated July 1, 2020	Multiple Delays Announced Weekly-Announcement now Anticipated August 14
CDPAP Transition for FIs not Winning Contracts	On or about September 28, 2020	45 Day Transition Period for FIs that did not win contracts to wind down business and transfer Consumers
Wage Parity Amendments	October 1, 2020	
Home and Community Based Services Eligibility Look Back Period	October 1, 2020	
Independent Assessment for Personal Care Services	October 1, 2020	Transition to Maximus
Home Care Cost Report	Due October 31, 2020	
LHCSA Private Pay Pilot	November 1, 2020	Expected Launch
LHCSA Statistical Report and Registration	Mid-November 2020	
LHCSA RFP Application Release	Fall 2020	Contracts Expected July 1, 2021
Final Implementation Date for Electronic Visit Verification	December 31, 2020	