



A Public Advocate for New York’s Home Care Workers: A New Role to Strengthen the Workforce

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Home care aides provide essential personal care and health-related services to older New Yorkers and people living with disabilities, helping them to remain independent as long as possible. Despite the critical importance of their work, treated as “domestic workers,” home care aides have historically earned low wages and had few labor protections. In recent years, as demand for home care has grown and providing these services has become a policy priority, lawmakers have reversed course, passing new laws and regulations which better safeguard home care workers from unfair treatment.

This new array of laws and regulations, though well intended, is multilayered and complex. Both workers who want to better understand their rights, and providers who want to abide by the law, find the new rules complicated and at times confusing. There is a great need for better information if the new rules are to be implemented effectively.

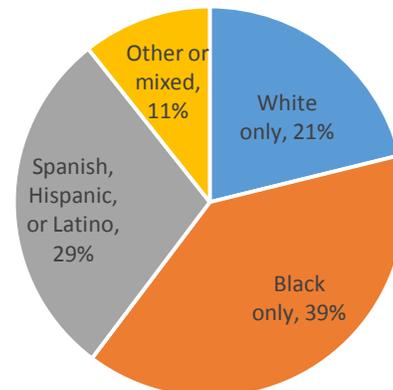
In light of these recent developments, PHI believes there is a need for a *public advocate for home care workers*, an entity or person who would function as an ombudsman, ensuring that workers and providers can navigate these rapidly changing legal requirements.

Background

The New York State home care aide workforce – which includes personal care aides (or “home attendants”) and home health aides – totals over 288,000, with more than two thirds of these workers employed in New York City.ⁱ These workers provide daily supports to hundreds of thousands of older New Yorkers and people living with disabilities, including assisting their clients with bathing, dressing, meals, cleaning, shopping, and going to school or work.

WHO ARE HOME CARE WORKERS?

New York Home Care Workers
by Race



- The median age of a home care worker in NY is 48 years old.
- Two thirds of home care workers in NY are foreign-born.
- 67 percent of NY home care workers have a high school diploma or less.

Source: PHI analysis of the American Community Survey, U.S. Census Bureau (2015). 2014 ACS 5-year PUMS. Retrieved from <http://www.census.gov/programs-surveys/acs/data/pums.html>

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The structure of the home care system puts home care aides – many of whom have little post-secondary education and for whom English is not their first language (see Did You Know box)– at a disadvantage when it comes to knowing their rights and challenging unfair treatment. Home care aides typically do not have the peer support and knowledge-sharing that comes from regularly interacting with coworkers in an office.

Labor unions provide information and support to their members, but a significant number of New York’s home care workers are not unionized. This leaves employers as the sole source of work-related information for many home care aides. Despite providing required information on workplace laws and regulations, employers are not necessarily seen by employees as a neutral source of information. Workers perceive an inherent conflict of interest, particularly when they are concerned about a violation that could affect their employment or their pay and benefits.

Ultimately, state and federal government agencies, which pay for the majority of home care services through Medicare and Medicaid, are responsible for ensuring that labor laws and regulations are properly enforced. However, their capacity to do so is limited. Currently, the New York State Department of Labor (DOL) has staff limitations and investigates an issue only after a critical mass of complaints is lodged against an employer or the violation is egregious. Additionally, the New York State Department of Health (DOH), which regulates home care, shares responsibility with the state DOL for ensuring that home care aides are treated fairly by their employers. This requires a level of coordination that the departments’ broad mandates and limited budgets make difficult at best.

DID YOU KNOW?

	Current Employment ¹	Entry Level Income ¹	Median Income ¹	Projected Increase (#) 2012-2022 ²	Projected Increase (%) 2012-2022 ²
Home health aide	146,550	\$18,920	\$22,050	58,630	45.3%
Personal care aide	142,220	\$20,760	\$23,330	52,510	36.9%

Source: ¹NYS Department of Labor, Labor Statistics. Occupational Wages (2015 First quarter). Retrieved from: <http://labor.ny.gov/stats/lsWage2.asp>

²NYS Department of Labor, Labor Statistics, Long-Term Occupational Employment Projections (2012-2022). Retrieved from: <http://labor.ny.gov/stats/lsproj.shtm>

New Labor Laws Impacting New York Home Care Aides

There have been a number of recent changes to wage and labor protections for home care aides. These changes, detailed below, create a complex network of rules.

1. **New York State Domestic Workers Bill of Rights (DWBR)**: Enacted in November 2010, this law previously only applied to home care aides directly employed by their clients. Upon the reinterpretation of the Fair Labor Standards Act (see #5), this law became applicable to agency-employed home care aides as well. In addition to guaranteeing workers one day of rest each week and three additional paid days off per year, the law provides certain protections against discrimination and harassment.ⁱⁱ
2. **Wage Parity**: As part of its effort to redesign the state Medicaid program, the New York State Legislature passed a wage parity requirement for home care aides as a component of the 2012 budget. By establishing a wage floor, the legislation brought the compensation of home health aides in line with that of home attendants in the downstate areas of New York City, Westchester, Nassau and Suffolk counties.ⁱⁱⁱ As of March 1, 2016, the wage parity law guarantees home care aides compensation (including wages and benefits) of \$13.22 per hour in Long Island and Westchester and compensation of \$14.09 per hour in NYC.^{iv} The law does not apply to workers in upstate New York counties. A recent amendment to the law requires a continuation of the benefits of \$4.09 for New York City and \$3.22 for the surrounding counties on top of the new minimum wage (see #4).
3. **Paid Sick Leave**: Home care aides who work in New York City are protected by the City's Earned Sick Time Act, which went into effect in 2014. Full-time workers are guaranteed one hour of paid leave for every 30 hours of work, and this leave may be taken to care for oneself or a loved one. This law guarantees two days of sick leave, in addition to the three days of rest provided by the state Domestic Workers Bill of Rights.^v The New York State legislature recently passed a new Paid Family Leave policy which will broaden this benefit beginning in 2018.
4. **Minimum Wage**: The state minimum wage increased from \$8.75 to \$9.00 per hour on December 31, 2015.^{vi} With the recently passed New York FY17 budget, the minimum wage is scheduled to rise to \$15 per hour in NYC by 2018 and in Westchester and Long Island by 2121. The rest of the state will increase to \$12.50 by 2020 with a pause for review to determine the impact on the economy. As these increases go into place, the wage portion of the wage parity requirement will be \$10 an hour or the new minimum wage, whichever is higher.
5. **Fair Labor Standards Act (FLSA)**: In October 2015, home care aides across the country became eligible for labor protections under the federal Fair Labor Standards Act (FLSA). As a result, home care aides are now protected by minimum wage laws, and must be paid time-and-a-half on their base wage (instead of time-and-a-half of the minimum wage, as was previously the case in New York) for overtime above 40 hours per week. Employers are also newly responsible for paying aides for time spent traveling between clients.^{vii}

In addition to these new rules and regulations, required compensation could be altered by several ongoing court cases seeking to increase compensation for aides when they provide 24-hour care.^{viii} Currently aides are compensated for 13 of the 24 hours, based upon the supposition that they receive five uninterrupted hours of sleep and three one-hour breaks for meals. The court challenges seek to ensure aides are compensated for a full 24 hours, regardless of whether they receive their uninterrupted sleep and meal time.

The Home Care Advocate Role

In this extremely complicated environment, home care workers have no centralized resource that provides support and education on the full range of applicable labor and wage rules, and neither do employers. Consequently, PHI finds need for an advocate who would be well versed in the home care labor rules and requirements. Such a person could operate at the state or city level, could be independent, or could hold a position within an existing agency or office. The role of the public advocate would include three main components:

Education: The largest share of the advocate's work would be to help home care workers learn about labor laws and regulations and answer their questions. As one example, the advocate could spearhead a public education campaign that might include in-depth educational sessions or the development of materials for employers and workers on rules regarding compensation and labor protections. The advocate would also be available via a toll-free phone number to answer any questions workers have about their rights.

Tracking and Reporting: The advocate could create a system for reporting complaints and making referrals to the proper enforcement agencies. An effective system would provide workers with a supportive environment in which to learn about their rights and file a complaint, if warranted. The advocate could track complaints and issue an annual report describing type and frequency. The most prevalent complaints could be reviewed to determine a course of action, such as an education campaign or a regulatory or legislative intervention.

Assistance and Support: The advocate could also help workers access state and local services for low-wage workers. For example, if a worker were in need of child care or health care, they could

What is an Advocate?

An advocate, also known as an ombudsman, is a person or entity that works on behalf of an individual or group of individuals to address an issue. An advocate is an objective, independent resource that can help answer questions and handle complaints. In New York, there are a number of advocates that work in an official capacity on behalf of home care and long-term care consumers, such as the Independent Consumer Advocacy Network (www.icannys.org), the Long-Term Care Ombudsman (<http://www.ltombudsman.ny.gov/>), and the Medicare Beneficiary and Family Centered Care Quality Improvement Organization (<http://www.livanta.com/bfccqio.html>). However, most home care aides are left without this valuable resource.

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refer the worker to appropriate services or resources. In addition, the advocate could provide information on available training programs and their costs.^{ix}

Overall, with the support of a public advocate, home care aides would be better informed and empowered to speak up on their own behalf, and existing labor laws and protections would be better enforced.

Ideas for Further Discussion

The public home care advocate role proposed in this brief is meant as a starting point for further discussion among the multiple stakeholders invested in a quality home care system for all New Yorkers. Some of the issues that deserve robust conversation and consideration include:

- **Location:** State and local offices will be needed to fully support home care aides. The newly created Office of Labor Standards in New York City could serve as an appropriate place for the advocate, as City Council Speaker Mark-Viverito proposed in her February 2016 State of the City speech^x and through legislation supported by five other city council members.^{xi} At the state level, DOL could provide a place for the work through its new Anti-Retaliation unit. Alternatively, a neutral third-party organization could be tasked with the work.
- **Skill Set:** The advocate should possess knowledge of the pertinent wage and hour laws as well as organizations and offices to which a worker could be referred. An attorney with experience as a labor lawyer would be ideal, but a person with a strong understanding of the home care system could also serve in this capacity with support from organizations that provide legal services.
- **Relationship between the State DOL and DOH:** As previously discussed, DOL and DOH are jointly responsible for protecting home care aides. These departments likely need additional resources to effectively monitor and enforce relevant labor laws. Further, regular communication across the agencies and with the advocate would need to be addressed in order to ensure that complaints and other issues were considered in a timely manner.
- **Advocate's Role in Recruitment of Home Care Aides:** An additional role for the advocate's office might be helping to grow the workforce through a public education campaign to recruit new aides into the field. The advocate might assist potential workers in understanding the training requirements and direct them toward free training programs that are connected to employment.

Conclusion

New York's home care aides have made considerable progress toward becoming a respected, professional workforce that provides highly valued services to elders and people living with disabilities. However, these workers struggle with complex new rules, laws and regulations that have come into effect over the last five years and continue to be adjudicated. Consequently, PHI proposes creating a position for a public advocate for home care workers. This position would educate, track and report complaints; refer workers to appropriate resources for challenging unfair treatment; and provide assistance on a range of matters important to home care aides. In addition,

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the advocate could indirectly help identify other serious issues affecting the home care field, including high worker turnover and low worker retention. The end result would be a home care system that better supports its workers and better enables them to provide quality care.



PHI works to transform eldercare and disability services. We foster dignity, respect, and independence— for all who receive care, and all who provide it. The nation’s leading authority on the direct-care workforce, PHI promotes quality direct-care jobs as the foundation for quality care. In New York, PHI is affiliated with Cooperative Home Care Associates, a worker-owned home care agency, and the managed-care plan Independence Care System (ICS).



PHI Medicaid Redesign WATCH is a three-year project to record, analyze, report—and intervene to mitigate dislocation of consumers and workers—as New York fundamentally transforms its Medicaid-funded long-term services and supports. Funding for this initiative is provided by the Ira W. DeCamp Foundation, the Ford Foundation, the Altman Foundation, and the Bernard F. and Alva B. Gimbel Foundation.

References

ⁱ At: <http://www.labor.state.ny.us/stats/lswage2.asp>

ⁱⁱ <https://labor.ny.gov/legal/domestic-workers-bill-of-rights.shtm>

ⁱⁱⁱ See <http://phinational.org/research-reports/medicaid-redesign-watch-1-wage-parity-home-care-aides>

^{iv} New York State Department of Health. “MRT-61 Home Care Worker Wage Parity.” Accessed on February 8, 2016 at: https://www.health.ny.gov/health_care/medicaid/redesign/mrt_61.htm.

^v <http://www1.nyc.gov/site/dca/about/paid-sick-leave-law.page>

^{vi} <http://www.labor.ny.gov/workerprotection/laborstandards/workprot/minwage.shtm>

^{vii} See FLSA Facts: Understanding the Revised Companionship Exemption <http://phinational.org/fact-sheets/flsa-facts-understanding-revised-companionship-exemption>. Currently, the U.S. Supreme Court is still considering whether to hear a challenge to the new companionship exemption rule.

^{viii} *Andryeyeva v. New York Health Care d.b.a New York Home Attendant Agency*, Decision and Order February 19, 2013 and Opinion September 16, 2014, 2014 WL 4650233 (N.Y. Sup. Ct. 9/16/2014); *Moreno v. Future Care*, 2015 WL 1969753*4, 43 Misc. 3d. 1202 (N.Y. Sup. Ct. Kings Cnty. May 4, 2015)

^{ix} See: https://www.health.ny.gov/professionals/home_care/hhtap_training_materials.htm

^x PHI, “NYC Council Speaker Proposes Division of Paid Care.” Accessed on February 16, 2016 at: <http://phinational.org/blogs/nyc-council-speaker-proposes-division-paid-care>

^{xi} Int 1084-2016, NYC Council. Accessed on March 29, 2016 at: <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2576392&GUID=632A3331-9DC6-4348-ADB6-AD9FF5F03A7>