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March 29, 2024

Council Member Adrienne Adams, Speaker  
New York City Council  
City Hall  
New York, NY 11434

Dear Speaker Adams:

Public Citizen is a nonprofit consumer, health and worker advocacy organization founded in 1971. With half a million members and supporters nationwide, and 52,000 members and supporters in New York, Public Citizen advocates before the courts, legislatures, and administrative agencies for worker rights and protection. We thank you for your efforts to improve the salaries and working conditions of home care aides. But more action must be taken, and it must be done swiftly. The New York City Council has the opportunity to immediately improve home care for individuals in need and vastly improve the working conditions of home care workers.

**New York City home care workers are fighting for their most basic rights — humane working hours and a living wage.**

The U.S. population is aging. According to the 2020 census, [one in six](#) people were over the age of 65, a number that is rapidly growing. An aging population means millions of elderly will need care. While institutional nursing homes and assisted living facilities fill an essential need, they are an expensive and limited option.

People with long-term physical conditions can often live safely at home with the assistance of a caregiver. Family may be able to fulfill the need in some cases, but paid home care aides are crucial to ensuring millions of people receive the care they need. This is by far the preferred option for most people in need and those receiving home care generally [need fewer doctor and hospital visits and have reduced overall health costs](#). Home care aides are a critical link in our health care system.

But in New York, home health aides are forced to work grueling 24-hour shifts resulting in extensive hours every week. And the wages they are paid are reprehensible. It's not just that these workers aren't paid overtime, they aren't even paid for nearly half of the hours they work.

It all comes down to the New York Department of Labor's "13-hour rule," an interpretation of the Minimum Wage Order Number 11 for Miscellaneous Industries and Occupations (12 NYCRR part 142). Home care aides who work a 24-hour shift are considered "live-in employees." The NY DOL distinguishes between being "on-call" — considered to be working during all hours required to remain in a particular work area — and being "subject to call" — able to leave the work area between assignments and only paid for work performed. Home care workers doing a 24-hour shift are considered "subject to call" and presumed to get three one-hour meal breaks and eight hours of sleep (Opinion Letter from Maria L. Colavito, Counsel, DOL, Mar. 11, 2010). Thus, they are only paid for 13 hours of work.



The 13-hour rule is only supposed to apply in cases where the worker is actually afforded 11 hours of free time, including five uninterrupted hours of sleep. Unfortunately, the burden falls on home care aides required to work 24-hour shifts to challenge the applicability of the rule by demonstrating the unavailability of time for meals and sleeping.

The rule itself is misguided. Someone in need of 24-hour care, by definition, needs round-the-clock care. Common needs include companionship, cooking, cleaning, assisting with bathing, dressing, toileting and other personal hygiene, managing medications, changing diapers, transferring the person in and out of chairs and bed, repositioning the individual every few hours, and constant vigilance to prevent disastrous falls and accidents. Anyone who has ever provided this kind of care for a family member or loved one knows that a caregiver working a 24-hour shift does not get 11 hours off!

The 13-hour rule is only supposed to apply in cases where the worker is actually afforded 11 hours of free time, including five uninterrupted hours of sleep. Unfortunately, payment for home care services under Medicaid is based on the care that is authorized, not the care that is provided. The social services district or Medicaid managed care organization reviews cases and makes a determination that a person is in need of 24-hour care and whether live-in 24-hour personal care services (i.e., 24-hour shifts) or split-shift care (two 12-hour shifts) is appropriate ([18 NYCRR 505.14](#); [GIS 12 MA/026](#): Availability of 24-Hour Split-Shift Personal Care Services). Providing two home care aides who each handle a 12-hour shift requires Medicaid to pay for a full 24 hours of care. But the NY Department of Labor’s judgement that 11 hours of a 24-hour home care shift is idle time gives NY Medicaid an incentive to limit split-shift care. A determination that live-in 24-hour personal care services will suffice means home care aides will be required to work 24-hour shifts, and Medicaid only has to pay for 13 hours of care.

The Medicaid determination puts home care aides in an impossible position. They are supposed to take a 24-hour shift that includes three hours of meal breaks and eight hours for sleep. But the person in need of care relies completely on the home care aide. A home care aide is not going to deny essential care because it’s time for their meal or sleep break. No decent person would.

The result — The New York home care system relies on [more than 100,000](#) heroic, compassionate caregivers to provide needed round-the-clock care for its citizens and refuses to pay them for almost half of the hours they work.

**The New York City Council has the opportunity to improve home care for individuals in need and vastly improve the working conditions of home care workers.**

Council Member Christopher Marte and co-sponsors — the Public Advocate (Mr. Williams) and Council Members Shahana Hanif, Robert Holden, Farah Louis, Julie Won, Chris Banks, Kamillah Hanks, Tiffany Cabán, Chi Ossé, Sandy Nurse, Lincoln Restler and Kristy Marmorato — have proposed a bill ([Int. 0615-2024](#)) that would limit the work shift of home care aides to 12 hours. It also caps the required work week at 56 hours without advance notice and the consent of the worker.

What’s remarkable is how justifiable the limits are. In a world where we accept the 8-hour day/40-hour workweek as the standard, how could limiting the burden placed on home care aides to a 12-hour day/56-hour workweek be controversial in any way?

Detractors argue that the bill would conflict with New York law. It doesn’t. It simply limits the number of hours a home care aide in New York City can be required to work, per shift and per week. This worker protection law has no impact on the Department of Labor’s judgement about the number of hours a home care aide actually “works” during a 24-shift, because home care aides will only work 12-hour



shifts. Nor does it interfere with assessment of an individual's need for Medicaid coverage. It may, however, make it harder to deny split-shift care for persons in need.

Detractors argue that limiting home care aide shifts to 12 hours will cost more money. Yes. It will. Home care aides will have to be paid for every hour they work. People in need of 24-hour care will receive 24-hour care, care that will be provided by workers who are not sleep-deprived, overworked and desperately trying to find a way to feed their families. The cost of care should be borne by Medicaid, not the home care aides.

**The resolution calling on the New York Legislature to pass legislation increasing wages for home care aides is an empty gesture.**

You led a [resolution](#) that the New York City Council passed on March 7, 2024 (Res. 0202-2024, sponsored by Council Members Adrienne Adams, Crystal Hudson, Darlene Mealy and Amanda Farías) asking the state legislature to increase wages and improve working conditions for home care aides — both critical needs. If New York is going to be able to ensure quality home care for those who need it, it is essential to build a strong workforce of home care providers. Livable wages, reasonable hours, predictable schedules, safe workplaces, and essential care and support for home care aides are fundamental imperatives. The state government has a responsibility to all New Yorkers to ensure that this basic foundation for home care is in place.

But proposals to address these issues have languished in the state legislature for years. Calling for the passage of state laws doesn't do anything to address the unconscionable working conditions home care aides face every day.

The New York City Council has a chance to fix a critical problem for thousands of home care aides. Passing the buck and hoping for the best is not a solution. Leaders are elected to fight for their constituents. **For the benefit of people in need of care and the heroic workers caring for them, the City Council must immediately pass legislation to end 24-hour shifts for home care aides.**

Sincerely,

Juley Fulcher, J.D., Ph.D.  
Worker Health and Safety Advocate