

HCP 2022 LEGISLATIVE RETROSPECTIVE



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President's Letter

Looking back at the past six months, I am filled with pride. During a worst-in-the-nation workforce shortage, New York State home care providers kept delivering for the patients who depend on them. Despite rapidly changing rules, regulations, and mandates, our industry set the standard for quality and compliance. And after more than a decade of austerity, our industry saw funding opportunities at the state and federal levels.

The pandemic laid bare so many weaknesses in health care, including inequitable access, an unpredictable workforce, and financial instability of providers. It has also highlighted the need and the desire of New Yorkers to be in their homes and communities! The COVID-19 crisis has shown this more acutely with residents in congregate care settings either leaving to go home or wishing to do so. Patients do better at home, and our communities do better too, as home and community-based services allow patients to spend their money locally and stay socially invested in their networks and neighborhoods. Despite the barriers, home care has demonstrated its strength and resilience throughout the pandemic, and HCP is proud to celebrate our members' successes.

This year's state budget represents the single biggest investment in home care in our state's history and is a tremendous acknowledgement by our lawmakers of the importance of caring for people in the community. After so many tough years, it now feels like a privilege to be able to focus on long-term sustainability rather than short-term survival. Make no mistake - survival remains an ongoing challenge. However, we have noted a significant shift as federal pandemic relief dollars have given providers some breathing room. Our challenge is to ensure that all home care providers, regardless of size or region, can capitalize on these opportunities as they arise.

HCP is a relentless, passionate driver of change. We listen to our members and take every opportunity to raise your concerns and challenges with policy makers. We press for solutions to address the ongoing workforce crisis, for regulatory and financial relief, and for the removal of barriers to access to care. We continuously look ahead to help our members prepare for the future of home care, a future that you and your association help shape! By staying true to our mission and core values, HCP is well-positioned to influence the future of the industry, to lead by empowering our members to adapt, evolve, and thrive, and to demonstrate and capitalize on the value of home care.

As the election season arrives, we know we will welcome new faces when the legislature reconvenes in the new year. HCP will continue to build on the relationships we have established and we look forward to introducing new lawmakers to home care. Through advocacy and education, we can create new champions for our industry and those we serve.

Just as our members never stop providing care, HCP will never cease our call for investments in home care to chart a path for sustainability and growth — for the good of patients, caregivers, and providers.

We are all in this together — and we wouldn't have it any other way.

- Kathy Febraio
HCP President/CEO

HCP reveled in the way our industry was finally understood as a critical component of our health care system. We achieved this through intense, organized coalition work and targeted grassroots advocacy. Those efforts were supported by deep policy, regulatory, and financial analyses, honest communication, and by the dedication of legislative champions and stakeholders across the spectrum who spoke with one voice.

Our focus for this year's budget and legislative sessions was directly informed by what we heard from our members. There is no question that the single biggest challenge has been the critical staffing shortage that plagues all sectors of the health care system, but which hit and continues to impact home care especially hard. The vast majority of our work targeted initiatives to bolster our members' ability to attract and retain the workforce they need now and into the future.

If the past year has demonstrated anything, it is the need for the home care industry to be flexible, informed, and supported in order to thrive. HCP has strived to empower our members with information and support during a time of instability, bringing clear analysis to regulatory matters and engaged advocacy to our legislative work. When the legislative session began in early January, our priorities were well-developed, and our tactical toolbox was refreshed and ready.

To align our work with HCP's mission, our public policy and legislative agenda can be described as falling into three primary areas. Our work serves to

- Influence the Future of the Industry (drive change)
- Lead the Industry in Adapting, Evolving, and Thriving (manage change)
- Set the Industry Standards for Quality, Cost-Effective Care (demonstrate and capitalize on value)

We are pleased to share with you some of the legislative highlights of the legislative session knowing that you will echo our pride in what was accomplished and our enthusiasm for the work yet to be done.

HCP Insider and More

Your Public Policy team rounds out its advocacy efforts with various activities in direct support of our members. The *HCP Insider* is many members' favorite benefit! Published weekly, it presents the latest news to help you run your business, maintain your workforce, and get through the pandemic.

To uphold our mission to help providers adapt, evolve, and thrive, we devote the time necessary to answer individual member questions and concerns. To provide accurate information, the Public Policy team consults with state regulatory agencies, subject matter experts, and even other seasoned providers when we respond to your inquiries. Keeping with the community spirit of association membership, we launched a new feature in the *HCP Insider* this year. "You Asked" allows all members to benefit from our research and expertise on these topics of interest.

Dear Administrator Letters (DAL) form the mainstay of the DOH's guidance for home and community-based services (HCBS) providers. HCP thoroughly reviews these communications and reports them in plain English for our members in the *HCP Insider*. Implementation of the NY Independent Assessor program, COVID-19 vaccine mandates, hiring requirements, and the Health Commerce System role updates were just a few of the topics the team simplified for our members.

There has been a never-ending stream of regulatory updates and permissions associated with the public health emergency. We created a Regulatory Timetable with expiration dates and references to help our provider members stay in compliance. This table is updated in the *HCP Insider* weekly.

Likewise, your Public Policy team attends state and federally-sponsored webinars so that we can provide a summary for those unable to attend. Electronic Visit Verification, Cost and Stat Reports, Public Health and Health Planning Council meetings, clinical pandemic topics and more are all recapped for you in the weekly *HCP Insider*. We've got you covered in your busy schedule!

When a subject requires a more in-depth discussion, HCP, with its affiliate the Community Health Care Services Foundation, Inc., provides webinars with Q&A opportunities. These sessions are a valuable member benefit, often available as recordings to view at your convenience.



The New York State Budget 2022-2023

Fair Pay for Home Care

If passed, Fair Pay for Home Care would have established a minimum hourly reimbursement rate for home care providers that would include:

- a sufficient minimum hourly wage to attract and retain home care workers,
- all costs tied to base wages (e.g., overtime, benefits, payroll taxes), and
- reasonable administrative/operational costs and investments.

HCP strongly supported this bill, citing two correlated crises in the home care sector in its rationale:

- A major home care workforce shortage: Home care agencies have seen a 30-40% reduction in their home care workforce, worsening the pre-pandemic trend. Each year, NYS employers need over 71,000 home care workers to replace those who leave their jobs, and an additional 26,000 workers to meet growing demand.
- A financially unstable home care industry: Medicaid reimbursement rates are tied to a wage that cannot sustain our workforce.

Last year, HCP joined an unprecedented coalition of consumer and labor advocates, providers, and other stakeholders, to ensure that reimbursement rates and wages are transparent, adequate, and linked. The coalition amplified home care's voice through press events, rallies, and collaborative communications that were as broad as they were deep. HCP's presence ensured that providers' needs and concerns about wages and rates were addressed; in particular, we pressed to expand this work beyond Medicaid Managed Care to benefit private pay and fee for service arrangements. We will continue working with this coalition for as long as it takes.

Along with regular communication with Fair Pay champions Senator Rachel May and Assembly Member Dick Gottfried, HCP met with legislators on key committees, and advocated with the state Division of Budget (DOB) and Department of Health (DOH/the Department), often educating both. HCP President/CEO Kathy Febraio testified at the virtual Joint Legislative Budget Hearing on Health and provided extensive written testimony to expand on her oral comments.

HCP participated in press events which garnered excellent news coverage, and we had an article published in *Home Health Care News*. Your grassroots efforts played an immensely important role during our Leadership Advocacy Day and through our Take Action Alerts.

All stakeholders had high hopes for Fair Pay going into the final days of budget negotiations. However, these talks occur behind closed doors and were derailed by the Bills Stadium deal and criminal justice reforms. The final budget yielded a small raise for home care workers, phased in over two years. Beginning on October 1, 2022, home care workers will receive an additional \$2 an hour above the state's minimum wage, with another \$1 increase scheduled for October 1, 2023. The raise is provided on top of Worker Wage Parity rates.

The state did not enact any language coupling this raise to a minimum Medicaid reimbursement rate for providers nor for private pay or fee for service arrangements..

This incremental raise falls short of what Fair Pay for Home Care would have achieved, yet at over \$7 billion it does represent a tremendous investment in home care.

HCP's Public Policy team is very proud of the work we did both as an organization and as part of a coalition. We sincerely thank the almost 700 HCP members and friends who took action through HCP Action Alerts to support Fair Pay for Home Care.

RFOs, LHCSA Ownership Changes, Contracts

HCP saw opportunities in the state budget process to influence the future of the industry, particularly with the various Requests for Offers (RFO) threatening to limit the number of providers and plans available to serve Medicaid consumers. The potential for these RFOs to further destabilize the industry was something we could not let stand unchallenged.

CDPAP RFO

The Consumer Directed Personal Assistance Program (CDPAP) Request for Offers (RFO) has been a years-long tense logistical nightmare for HCP members acting as Fiscal Intermediaries (FI) in the CDPAP program.

The Senate's one-house budget had included language to postpone the already underway RFO process while a study of the CDPAP was conducted. After negotiations were complete, the final budget instead fundamentally altered the CDPAP RFO outcome.

Under the enacted budget, certain FIs that were not initially selected in the 2021 CDPAP RFO may now be eligible to enter into Medicaid contracts. This was good news for the previously unselected FIs, and potentially disruptive news for the FIs expecting to vastly increase their FI business models and partnerships.

The expanded provider pool is now based on the following criteria:

- Provider is qualified by the Commissioner of Health as meeting the minimum requirements for serving as an FI in CDPAP under the previously implemented RFO.
- Provider attests that it was serving beneficiaries as an FI for the requisite number of consumers from January 1, 2020 to March 31, 2020 as outlined in the budget:
 - Served a minimum of 200 consumers in a city of a million or more OR
 - Served at least 50 consumers in other cities/areas.

HCP will monitor the program's progression. As of July 11, 2022, DOH has not published the attestation form or the accompanying guidance.

LHCSA RFO Repealer

Despite HCP's relentless advocacy for the repeal of the Licensed Home Care Services Agency (LHCSA) Request for Offers (RFO), its implementation was not halted or delayed by budget legislation.

The only mention of this RFO in the final NYS Budget was as an administrative line item of \$25 million in savings in Fiscal Year (FY) 2024. The source of this significant savings where none were previously indicated is unclear. However, given that the savings is forecast for FY 2024, not 2022-23, HCP and its members can still push for the RFO's repeal in the next budget season.

Managed Long-term Care Plan RFO Replaced by Study

In her budget briefing, the governor had proposed an RFO process for managed long-term care plans (MLTC) wishing to contract with DOH to provide Medicaid services. Both the Senate and the Assembly rejected the idea.

Instead, the final budget lays out a requirement for a study on not only MLTCs, but also Managed Care Organizations (MCO). Under the new law, an independent contractor will issue a report by the end of October addressing the status of services offered by these payers, with the goal of reforming the delivery of services under Medicaid.

HCP is still awaiting information from the state regarding its selection for the contractor charged with the study. We anticipate HCP will weigh in with suggested reforms, and to that end we have already undertaken a member survey to gather feedback on providers' experiences with MLTCs. We intend to take every opportunity to inform the process.

LHCSA Ownership Change

The governor's budget proposal contained new provisions for the application of a need methodology for ownership of all licensed entities including home care agencies. In its one-house budget, the Senate added a study to identify potential barriers to licensure.

Neither of these provisions were included in the final budget language, much to the relief of HCP members. However, the road to LHCSA ownership changes remains unclear, and HCP continues to press the state for clarity regarding mergers, acquisitions, and new licenses.

Contracts

Recognizing that several vendor contracts affiliated with the state's Medicaid program remained in place and unchecked due to the public health emergency, the final budget deems several such contracts to expire on September 30, 2025, and to thereafter be subject to the normal competitive bidding process.

This expiration decree can be considered a bit of good fortune for HCP members, as we have fought right along for the complete repeal of the NY Independent Assessor Program (NYIA). While the NYIA is not being repealed, at least we know the contractor will be properly scrutinized during the bidding process. Other contracts affected by this law include the conflict-free enrollment broker and call center contract.

Beyond Fair Pay and RFOs: Charting a sustainable course for home care's future

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HCP Take Action Alerts

Additional HCP state budget advocacy centered on long term sustainability for our industry by maintaining focus on two primary themes:

- Addressing the workforce shortage and empowering our members to recruit and retain the workforce that consumers demand.
- Addressing critical funding mechanisms that have failed to keep pace with the true cost of delivering care.

929

Advocates took action

HCP raised concerns about the health and mental hygiene workforce bonuses which were welcome, but insufficient to solve the long-term workforce shortage that has risen to critical levels. Given the stated purpose of the bonuses is to reward and recognize workers who served during the pandemic, the exclusion of home care was particularly cruel.

3,154

Messages sent to state legislators

HCP supported the legislative version rather than the Executive's budget proposal of the Clean Slate Act. Both versions would seal the records of certain misdemeanor and felony convictions after a specified amount of time has passed; however, the legislative version included protections for entities already required to perform fingerprint background checks, effectively allowing the seal to be pierced. It was very important that home care agencies and similar employers continue to have access to an applicant's criminal history. No version of Clean Slate was included in the final budget.

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Messages sent to the governor

Final Thoughts








The availability of federal pandemic relief dollars fueled the historic investment in home care seen in the enacted state budget. For the first time in over a decade, budget negotiations were not defined by austerity, and instead offered opportunities which fundamentally shifted the conversation.

HCP was gratified to see legislators demonstrate their understanding of home care as a critical component of our health care system. This didn't happen by accident. It was the result of intentional and cooperative work with other stakeholders, including providers, patients, advocates, legislative champions, and workers, who joined forces to amplify our unified message. While we didn't get everything we wanted, our work during the budget is illustrative of what we can accomplish when our focus is not limited to a fight against imminent industry collapse, but also includes considerations for longer-term sustainability.









The state budget achieved a lot, but it also left many unanswered questions and failed to address key industry-wide challenges. In our transition into the legislative session, HCP kept its strategic focus on mission-aligned legislation that would help our industry to rebuild its workforce, become more sustainable for the long term, and demonstrate value in a continuously changing environment.

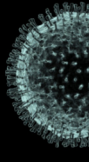
Budget 2022-2023 at a Glance

The following charts summarize budget issues impacting our home care provider members' ability to adapt, evolve, and thrive well into the future amid times of tremendous change, as well as issues that will drive change by influencing the future of the industry.

Lead the Industry in Adapting, Evolving, and Thriving			
Issue	Budget Outcome	Governor's Proposal	Legislative Proposals
Fair Pay for Home Care (S5374/A6329)	Not included. 	Not included.	Both houses advanced language to establish a base wage for home care workers at 150% of the regional minimum wage and a regional minimum rate of reimbursement.
Health and Mental Hygiene Workforce Bonuses	Bonuses included for most health and mental hygiene workers,  <i>but excluded home care workers.</i> 	\$1.2 billion of state support for healthcare worker retention bonuses, with up to \$3,000 bonuses going to full-time workers who remain in their positions for one year, and pro-rated bonuses for those working fewer hours.	Senate: \$1.2 billion of state support for healthcare worker retention bonuses, with up to \$3,000 bonuses going to full-time workers who remain in their positions for one year, and pro-rated bonuses for those working fewer hours. Assembly: Modified the Governor's proposal by expanding the list of eligible personnel to include other front-line workers in support positions and by addressing the benefits cliff that would have inadvertently made certain workers ineligible for public assistance.
Clean Slate Act (S1553D/A6399C)	Clean Slate was not passed in the enacted state budget. 	Would seal the convictions of certain felonies after 7 years and misdemeanor records after 3 years, DCJS would not be authorized to provide criminal history information that is sealed. The proposal provided limited exemptions.	Senate: Modified Governor's proposal to allow entities already required under law for employers that perform fingerprint background checks to pierce the seal. Assembly: Not included.
Provider Rate Restoration	1.5% Across the Board (ATB) cuts restored, however it will not go to providers. The MLTCs were not included in the cut, thus they aren't included in the restoration.  Please note that MLTCs were not included in the cut, thus they aren't included in the restoration. 	The Governor's budget proposed to restore the 1.5% across the board Medicaid cuts that were previously enacted for Medicaid providers. In addition, the Governor proposed to provide an increase in Medicaid rates of an additional 1 percent this year (see Trend Factor below), excluding certain providers/services including pharmacy and insurance plan payments.	Senate: Accepted Governor's proposal and modified it by changing the 1% Medicaid rate increase proposal from two years to making it permanent. Assembly: Accepted Governor's proposal.
Nurses Across NY	Nurses Across New York (NANY) student loan forgiveness program targeting direct care nurses who commit to work in healthcare shortage areas, with initial funding set at \$2.5 million per year. The budget also added \$2 million in funding for the Patricia K. McGee nursing faculty loan forgiveness program. 	Established the Nurses Across New York (NANY) loan repayment program, which would reimburse nurses working in underserved communities for loan repayment over three years.	Senate: Modified the Governor's proposal by expanding the list of professions eligible for the program and provided an additional \$1.3 million. Assembly: Modified the Governor's proposal by expanding the types of locations and the categories of nurses eligible for the program.

Influence Future of the Industry

Issue	Budget Outcome	Governor's Proposal	Legislative Proposals
CDPAP Study Bill	No study. Instead, CDPAP RFO revamped and expanded. 	Not included.	Senate: Advanced language to require a study of the Consumer Directed Personal Care Program and to pause any program changes while such study is underway. Assembly: Not included.
CDPAP RFO	Certain FIs that were not initially selected in the 2021 CDPAP RFO may now enter into Medicaid contracts. See page 7 for more extensive reporting. 		
Increase Medicaid Trend Factor by 1%	1% trend factor increase adopted; unclear how or if MLTCs will be directed to pass through to providers. 	Allowed for a payment of 1% across the board for health care providers including Licensed Home Care Services Agencies.	Senate: Accepted the Governor's proposal; modified by changing the 1% Medicaid rate increase proposal from two years to making it permanent. Assembly: Accepted the Governor's proposal.
Private Duty Nursing Rate Increase	The medically fragile adult rate is lower than the medically fragile child rate. Budget includes enhanced rates for Private Duty Nursing (PDN) so that nurses caring for patients under age 23 will be able to continue providing care at that higher child rate once the patient reaches age 23. Rates may be calculated by the Commissioner of Health from average 2020 Medicaid Managed Care payments. 	Directed the DOH commissioner to increase private duty nursing rates for the care of medically fragile adults.	Senate and Assembly: Redefined "adult" to include any person who previously qualified as a medically fragile child but no longer meets the age requirement; increases the rate for PDN services for medically fragile adults for fee for service; DOH to develop benchmark rates equal to the fee for service rates for Medicaid managed care payments for reimbursement of PDN services.
Medicaid Global Spending Cap	The methodology for calculating the cap has changed to a 5-year average and will now be based on the annual growth rate projections from the Centers for Medicare and Medicaid Services' (CMS) actuary offices. Extends the cap through SFY 2024. 	Updated the metric used to set the global cap spending limit from a 10-year rolling average of the Medicaid component of the Consumer Price Index to a 5-year rolling average. Extends it through SFY 2024.	Senate and Assembly: Rejected the Governor's proposal and instead advanced language to repeal the State's Medicaid spending cap.
Expanding Medicaid Eligibility	Increased the income limit for seniors and people with disabilities from 87% to 138% of the federal poverty level (FPL). 	Removed resources from consideration for Medicaid eligibility and increased the income limit of the Federal Poverty Level for Seniors and Persons with Disabilities.	Senate: Accepted the Governor's proposal. Assembly: Modified the Executive proposal by making technical amendments regarding Medicaid income eligibility limits.
Quality Incentive/Vital Access Provider Pool (QIVAPP)	Provides one year of additional support for the QIVAPP program to improve the quality of both home and personal care services. 	Not included.	Senate: The Senate advanced language to codify the Quality Incentive Vital Access Provider Program and provided funding to support its growth. Assembly: Not included.
Healthcare Transformation Fund IV	\$25 million for community-based services including home care. 	Funded the Statewide Healthcare Transformation Fund IV with \$1.6B, included \$450M for community-based providers.	Senate and Assembly: Modified the Executive proposal, with regards to Community-Based Organizations, safety net facilities, and emergency departments.



COVID-19 Coverage: Your Business, Your Health

As the pandemic impacted our lives for another year, HCP's Public Policy team diligently kept members updated with the news they needed to not only stay compliant with requirements, but also to keep themselves, their staff, and their patients as safe as possible.

Workplace Requirements

The New York Health and Essential Rights Act ([HERO Act](#)) and the Occupational Safety and Hazard Administration (OSHA) each had their own ideas about keeping workers and the public safe from SARSCoV-2 infection. HCP provided regular updates to help our members keep these directives straight. We also monitored and reported on COVID-19 leave requirements, which often differ for New York City vs the rest of the state.

When DOH implemented a COVID-19 vaccine mandate for most of the health care workforce in 2021, HCP spoke out on behalf of the home care industry. We submitted comments to the Public Health and Health Planning Council (PHHPC) as it considered the proposed rules, and the mandate was featured in our testimony before a Joint Assembly Standing Committee hearing on the workforce impact of the pandemic. The unique nature of our sector made compliance difficult, and while workers were lost to other industries, we helped our members survive the mandate and the often-confusing rules that came with it.

Pandemic Financial Relief

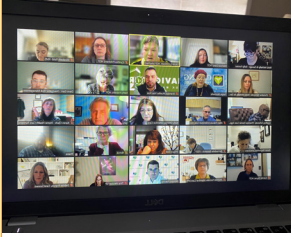
The Public Health Emergency (PHE) brought with it government funding to help businesses survive shutdowns and shifting employment trends. HCP informed members of federal opportunities such as the Paycheck Protection Program (PPP) and Provider Relief Funds (PRF). Using our public-facing COVID-19 website, members were able to access these and other programs including Paid Leave and Employee Retention Tax Credits. When audits of these relief initiatives became apparent, we reported on that as well.

Emergency Planning

Community Health Care Services Foundation, Inc. (CHC), HCP's affiliate, was afforded emergency management funding from both the New York City and New York State Offices of Emergency Management. This financial support allowed us to devote resources and staff time to prompt reporting of pandemic response efforts and relay important health information for you and your patients.

Clinical Updates

HCP knows that your patients' health and your staff's wellbeing are at the center of all you do. Therefore, our pandemic reporting didn't end with regulations and mandates. With our weekly COVID-19 Update in the *HCP Insider*, we kept you informed about all the latest clinical updates from the mainstream news. Going a step farther, we were also able to bring to light less-publicized research and reports of interest to keep our members tuned-in to scientific innovations and advancements.



The Legislative Session and Beyond

HCP's advocacy for home care continued into the immediate post-budget period by undertaking some level-setting with lawmakers. While the final state budget enacted a raise in the minimum wage for home care workers, it was not coupled with a reimbursement mechanism. The intentional exclusion of home care workers from eligibility for the workforce bonuses particularly stung. During our statewide Budget Update webinar, and in chapter meetings and conversations with our members, it became clear that the enacted state budget created additional challenges. HCP set its legislative goals accordingly, and we communicated those goals with our members and with lawmakers:

- Address the ways the enacted state budget fell short of sustainably addressing the critical workforce shortage.
- Empower home care to adapt, evolve, and thrive in a changing environment.
- Drive industry change by influencing the future of home care.
- Demonstrate and capitalize on the value of home care by setting the industry standards for quality, cost effective care.

Home Care Funding and Workforce

Raising our voices regarding the home care workforce crisis went far and beyond simple recruitment and retention strategies this year. The pandemic brought new confounding factors and policies we ardently addressed for our members with the goal of empowering them to manage change.

FMAP

Governmental funding is always top of mind as HCP fights for the sustainability of the home care industry. Over the past 13 months, HCP has dedicated significant time and resources to ensure home care is prioritized for funding made possible by the American Rescue Plan (ARP). This funding is being funneled to states via an enhanced match in the Federal Medical Assistance Program (FMAP).

Beginning with the first Centers for Medicare and Medicaid Services (CMS) informational session in May of 2021, HCP has reported on FMAP funding and brought our concerns and recommendations to top DOH officials. We intend to keep fighting for equitable distribution to our provider members as the remainder of the FMAP funds are appropriated going forward.

Rates

Through member and DOH engagement, HCP remained well advised regarding the issues surrounding the 2020 Home Care Cost Report and the subsequent 2021 rates released by the Department in early 2022. This year's Cost Report has already been released by the Department in an attempt to better align with the rate setting timeline.

Emergency Relief Request

When Governor Hochul delivered the State of the State address announcing her commitment to health care spending and workforce initiatives, HCP took her to task. The Public Policy team sent a letter to the governor pleading for emergency relief funding for the home care industry, which was largely ignored while hospitals and nursing homes received financial assistance time and again throughout the pandemic.

We fortified our request with a press release, media blitz, and a grassroots Call to Action. While home care did not benefit from any emergency assistance, our appeal once again put home care in the public's eye.

Impact of Covid-19: HCP Testimony

HCP provided written and oral testimony to the Assembly Standing Committees on Health, Education, and Labor in November 2021 regarding the impact of COVID-19 on the delivery of health care and the health care workforce in New York State. HCP President/CEO Kathy Febraio traveled to New York City to deliver HCP's remarks.

We emphasized that multiple factors unrelated to the pandemic have contributed to the long term home care workforce crisis. Inadequate reimbursement rates hinder a provider's ability to provide a competitive wage. Additionally, unfunded mandates and unreimbursed training continue to unduly stress providers' ability to finance the recruitment and retention of quality workers. Home care workers' personal experience with COVID-19 coupled with the vaccine mandate caused a mass exodus of these essential workers. The lack of childcare in the face of remote schooling and the availability of extra unemployment benefits were exacerbating factors.

COVID-19 Vaccine Mandate

The COVID-19 vaccine mandate was not only detailed in our workforce testimony to the Assembly, but it was also a significant priority for HCP's Public Policy efforts throughout the fall and winter months extending into 2022. We monitored the associated rulemaking by the PHHPC and provided testimony at every opportunity. We were pleased that the Council referenced our comments during the panel's livestreamed discussion on the mandate rule.

Per usual, our advocacy against the vaccine mandate included education about the uniqueness of the home care sector and its workers compared to other health care provider types. Geographic diversity, vaccine hesitancy and sporadic work schedules meant the mandate hit our industry particularly hard. Despite our pragmatic opposition, home care was not carved out of the vaccine mandate for NYS health care workers. HCP's advocacy efforts did, however, contribute to DOH's decision NOT to enforce its proposed COVID-19 booster mandate for health care.

Our members succeeded with their vaccination efforts but lost many workers to other industries. Time and again, we reminded state policymakers that they had for months collected workforce data to illustrate the mandate's impact on the home care workforce. We continue to press that our policymakers must use this information to provide appropriate relief and workforce solutions.

24-Hour Care Bill

HCP was relieved that a tighter rein on home care workers providing [24-hour care](#) did not pass this session, and are closely watching a NYC proposal to limit the hours worked by home care aides. Despite our opposition, a change in state law did pass the legislature, however, that limits an employer's ability to mandate overtime for nurses working in home care. We will continue opposing it at the executive level.

Unemployment Insurance Fund Shortfall

HCP continues to monitor and report on New York State's outstanding debt to the federal government following a shortfall in the state's Unemployment Trust Fund in 2021. HCP joined more than 50 other organizations in sending a letter to legislative leadership asking for relief in the form of a state budget allocation, leveraging unspent federal dollars as well as state surplus revenues to offset this Unemployment Insurance (UI) debt.

Interest on the state's over \$8 billion UI debt will continue to grow if not paid by November 10, 2022. Repayment by this deadline seems unlikely, and the resulting increase in employer payroll taxes will hinder economic recovery statewide, as well as severely impacting our members' business outlook. HCP's Public Policy team will continue to assess the state's progress as well as any proposals that will impact our members.

Medicaid Efficiency and Sustainability: HCP Testimony

HCP provided testimony for a diverse legislative panel convened by Assembly Member Gottfried in the fall of 2021. The discussion centered on the state's Medicaid program's effectiveness and sustainability, especially in the wake of the 2011 and 2020 "Medicaid Redesign Teams" (MRTs).

[HCP's written testimony](#) advocated for home care support via Medicaid policies and the expanded funding necessary to stabilize and grow the workforce while boosting the financial health of the industry. We educated legislators on the costs associated with wages, and why any wage hike must be linked to a reimbursement increase for providers.

We explained how managed long-term care programs increase costs and inadequately support the financial realities of the provision of services. We voiced support for the continued carve out of the waiver programs and urged repeal of the Licensed Home Care Services Agency (LHCSA) Request for Offers (RFO), as well as the Medicaid Global Cap. HCP also highlighted the ineffectiveness of the Cost Report process and the detrimental effects of the Independent Assessor initiative.

VBP Readiness

Setting Industry Standards for Quality, Cost Effective Care

The move to value-based purchasing (VBP) across the entire health care universe is providing HCP with an unprecedented opportunity to set industry standards for high-quality, cost-effective home care. Through participation in VBP arrangements and activities, our members are able to truly demonstrate their value and reap the benefits of the resulting lower health care costs and better patient health.

HCP's Public Policy team is magnifying our involvement with VBP activities as DOH seeks to enhance these initiatives in the state Medicaid program. Through research and member feedback, we ensure our members' voices are clearly heard by policymakers, and we keep members informed every step of the way.

New Work Group Convened

In early spring, 2022, HCP's Public Policy team convened a VBP Work Group that will generally meet monthly. The Work Group will offer recommendations to the Department, the plans, and other stakeholders on how Licensed Home Care Services Agencies (LHCSA) can positively impact quality of care and rehospitalization rates. It will also consider HCP member needs for VBP education, which can be offered by Community Health Care Services Foundation (CHC), HCP's educational affiliate.

HCP Comments on Updated VBP Roadmap

Concurrent to advancing its plan for enhanced Federal Medical Assistance Program (FMAP) VBP funding for home care, the Department updated and simplified its VBP Roadmap.

HCP took the opportunity in February 2022 to submit its comments regarding the state's Roadmap. We noted the lack of VBP opportunities for home care agencies, despite the high utilization of home care by the Medicaid population.

We suggested a financially supported role for home care providers in observing and reporting on Social Drivers of Health (SDH), which are non-clinical factors influencing health status. Aides in the home can even influence some SDH and contribute to improved outcomes. Food security, transportation, safety, and social interaction are some of the areas that can benefit from home care services. Without SDH options for Level 1 contracts, agencies new to VBP are not offered this steppingstone to more value-driven contracts.

Finally, VBP data tools and system interoperability must be maximized in the home care space. HCP supports two-way data sharing for home care providers, and we see it as a necessity for VBP success.

1115 Waiver: HCP Testimony

In April 2022, the state announced it had prepared its new 1115 waiver proposal and opened a 60-day public comment period. HCP testified at one of the DOH hearings on the waiver, as well as submitted written testimony.

The proposal calls for a new five-year Medicaid investment totaling approximately \$17 billion with a state goal to achieve reform by reducing disparities and increasing health equity.

HCP stated that home care serves the very population targeted by this reform, and yet was barely mentioned in the waiver. We stressed that home care aides are well positioned for a holistic view of the patient and expressed our support for a plan utilizing regional care, goals, and metrics.

As noted in our Roadmap comments, HCP suggested that DOH look to home care providers for data collection in VBP programs. We added that the plans must be held accountable for following the state's course for VBP.

The home care workforce crisis was also highlighted in our 1115 waiver commentary. HCP explained that provider engagement is critical for successful workforce investments and initiatives. We support the Department's desire to develop career pathways for home care and other entry-level workers, but expressed concern that the large financial commitment to workforce proposals (about 10% of the total waiver) would not yield meaningful results if innovations are not implemented efficiently. We look forward to seeing the state's final 1115 waiver submission in the coming weeks.

Labor and Business-Related Advocacy

HCP's Public Policy team doesn't lose sight of the fact that our members not only provide care; they run a business. Therefore, we also keep you up to date regarding legislative changes affecting the way you run your enterprise, empowering you to adapt and thrive.

HCP opposed a **wage lien** bill, which passed both houses and awaits the governor's signature. We will weigh in with our objections by connecting with the executive and her staff.

NYC adopted a law that will require job postings to include a **salary range**. The law takes effect November 1 of this year. A similar [salary disclosure bill at the state level](#) passed both houses and awaits gubernatorial approval.

The team reported on **COVID-19** leave law changes, both at the state and New York City levels. Electronic monitoring and the use of **artificial intelligence** for hiring also saw increased statutory scrutiny this year, and HCP will remind members how to comply as effective dates approach.

We continue to pursue clarity regarding the implementation of the **home care worker minimum wage increase**, as well as rules and deadlines connected to **Worker Wage Parity** audit processes.

HCP monitored the progression of the **Secure Choice Savings Program**, which will require employers to enroll workers in a retirement plan. Finally, the NYS **Whistleblower** law was enhanced effective in January 2022. The updated statute expanded the pool of eligible employees, as well as strengthened protections for those bringing complaints.

Federal Advocacy

While HCP is a state association, it is necessary to sound the alarm for home care at the federal level. Our membership with the National Association of Home Care and Hospice (NAHC) ensures we are informed about the global issues and initiatives affecting our industry, as well as provides access to experts around the country to inform our efforts here at home.

The Federal [Better Care, Better Jobs Act](#) was introduced last year and reflects President Biden's desire to strengthen home and community-based services. HCP publicly supported the bill calling on NYS legislators to follow Washington's lead by properly funding the home care industry and thoughtfully enacting policies to strengthen, not stifle, providers' ability to care for New Yorkers at home.

In April 2022, HCP's Public Policy team responded to a **Centers for Medicare and Medicaid Services (CMS) Request for Information (RFI)** regarding access to care. The RFI would serve to inform future Medicaid policies at the federal level. The bill is now being renegotiated, and HCP will report on its progress.

HCP's recommendations and comments centered on home care's unique position in the person-centered care model, stressing that broad provider networks and adequate reimbursement and funding are critical to ensure all New Yorkers have equal access to care.




We lauded home care's culturally diverse workforce and asserted that state and federal policies and practices must foster collaboration across the entire health care spectrum and enhance access to care by protecting and supporting providers.

Staff and Member Engagement




HCP's Public Policy team regularly joins chapter meetings to give updates and to hear directly from our members about their concerns and questions. We empower our members with skills and information to speak with their own voices to elected officials and lawmakers, keeping you abreast of issues like redistricting and elections. We build relationships across the political spectrum, serving as a trusted and reliable resource. HCP staff members are lifelong learners who study regulatory and legislative issues to better understand their impact on our industry.

HCP members have a tremendous role in the success of our legislative endeavors. We were so happy to see our members who joined us for in-person Advocacy Days. Your experience as industry leaders informs our advocacy work and we are inspired by your passion.




Below is a brief compendium of the bills and issues that HCP addressed during the legislative session which ended on June 4, 2022. HCP's Public Policy team notes that this is the 2nd in a 2-year legislative cycle, so any bill not passed in this past session will need to be reintroduced when the new session begins.

Empower home care to adapt, evolve, and thrive in a changing environment		
Bill / Issue / Status	Position	Purpose
<p>Consecutive Nurse Hours: Home Care (S4885A/A181A)</p> <p><i>Passed and awaiting delivery to Governor Hochul.</i></p> <p><u>Sponsors:</u> Senator Diane Savino Assembly Member Aileen Gunther</p>	<p>HCP: Memo in Opposition. Will submit comments when delivered to governor.</p> 	<p>Adds home care visits to the existing law, under which no health care employer can require a registered professional nurse or a licensed practical nurse to work more than that nurse's regularly scheduled work hours. Refusal to work overtime would not, on its own, be considered patient abandonment nor would it constitute professional misconduct. Nurses would continue to be able to work overtime on a voluntary basis.</p> <p><i>Takes effect 90 days after signed into law.</i></p>
<p>Wage Disclosure (S9427A/A10477)</p> <p><i>Passed and awaiting delivery to Governor Hochul.</i></p> <p><u>Sponsors:</u> Senator Jessica Ramos Assembly Member Latoya Joyner</p>	<p>HCP: No position. May submit comments when delivered to governor.</p> 	<p>Requires employers to disclose compensation or range of compensation upon issuing a new job opportunity, promotion, or transfer. Requires posting a correlating job description and creates a complaints and civil penalties process for noncompliance. The law applies to companies with four or more employees.</p> <p><i>Takes effect 270 days after signed into law.</i></p>
<p>Aide Training on Sexuality, Gender Identities, and Expression (S2534A/A1880A)</p> <p><i>Passed and awaiting delivery to Governor Hochul.</i></p> <p><u>Sponsors:</u> Senator Gustavo Rivera Assembly Member Jeffrey Dinowitz</p>	<p>HCP: Concern. Implementation will be key to this bill's impact on our members. May submit comments when delivered to the governor.</p> 	<p>Requires DOH to add a "patients of diverse sexual orientations and gender identities or expressions" module to the Home Care Curriculum and the Nurse Aide Training Program to help ensure that LGBTQ+ individuals of all ages get better, more culturally competent care.</p> <p>The training unit required by this act shall be developed within six months of the effective date of this act and shall be required for all certifications and re-certifications of home health aides, personal care aides, personal care staff, and certified nurse's aides issued on and after such six-month date.</p> <p><i>Takes effect when signed into law.</i></p>

Drive industry change by influencing the future of home care

Bill / Issue / Status	Position	Purpose
<p>Caregiving Continuum Study Bill (S5734A / A6202A)</p> <p><i>Passed and awaiting delivery to Governor Hochul.</i></p> <p><u>Sponsors:</u> Senator Sean M. Ryan Assembly Member Didi Barrett</p>	<p>HCP: No position.</p> 	<p>This bill will direct a multi-agency study to be conducted by the commissioners of Department of Health, the Office for the Aging, the Office of Children and Family Services, the Office for People with Developmental Disabilities, the Office of Mental Health, and the Department of Labor to identify the various issues impacting formal and informal caregivers to ultimately determine the best approach to address the ever-increasing statewide continuum of caregiving workforce shortage.</p> <p><i>Takes effect when signed into law.</i></p>
<p>LHCSA RFO Repealer (S6640/A7304)</p> <p><i>Not passed: HCP will seek reintroduction next session.</i></p> <p><u>Sponsors:</u> Senator Rachel May Assembly Member Dick Gottfried</p>	<p>HCP: STRONG SUPPORT. Legislation introduced at our request.</p> 	<p>Repeals section 3605-c of the Public Health Law to restore the right of a qualified licensed home care services agency (LHCSA) to serve Medicaid enrollees.</p>
<p>Worker Bonus Fix (S9476/A10458)</p> <p><i>Not passed: HCP will seek reintroduction next session.</i></p> <p><u>Sponsors:</u> Senator Anna Kaplan Assembly Member Latoya Joyner</p>	<p>HCP: STRONG SUPPORT. Legislation introduced at our request.</p> 	<p>Adds additional positions, including home care frontline workers, in the definition of employee for the purposes of health care and mental hygiene worker bonuses enacted in the State Budget.</p>

Empower home care to adapt, evolve, and thrive in a changing environment

Bill / Issue / Status	Position	Purpose
<p>Clean Slate Act (S1553D/A6399C) <i>Not passed.</i> <u>Sponsors:</u> Senator Zellnor Myrie Assembly Member Catalina Cruz</p>	<p>HCP: Memo of Concern. </p>	<p>Seals records of misdemeanors and felonies; allows entities already required under law to undertake fingerprint background check to pierce the seal.</p>
<p>Wage Lien (S2762/A766) <i>Not passed.</i> <u>Sponsors:</u> Senator Jessica Ramos Assembly Member Linda Rosenthal</p>	<p>HCP: Memo in Opposition. </p>	<p>Creates an employee lien against property of employers accused of wage theft in order to secure payment of wages due.</p>
<p>Frontline Worker Tax Credit (S6782B/A9928A) <i>Not passed.</i> <u>Sponsors:</u> Senator Elijah Reichlin-Melnick Assembly Member Michaelle Solages</p>	<p>HCP: No position. We supported the original bill and sought amendment to make the tax credit reimbursable. As amended, it does not apply to home care. If reintroduced, HCP will reevaluate. </p>	<p>Establishes a frontline healthcare worker tax credit of \$2500 for frontline healthcare workers and certain long-term care facility workers during the COVID-19 pandemic. Applies to public employees under specific circumstances.</p>

What's Next?

Between now and the start of the new legislative session, HCP's Public Policy team will be engaged with many of the issues already touched upon this past year. Workforce issues like reimbursement for the new wage increase, and other large systemic challenges to long term sustainability will continue to be our policy priorities. We will continue to fight for improved overall reimbursement rate adequacy and transparency and regulatory reforms. We will hold policy makers accountable to address long-standing bottlenecks like worker wage parity compliance, LHCSA ownership changes, and passing through funds from the plans to the providers.

In the coming months, you can expect increased coverage of New York City Council meetings; NYC is often ahead of the state on issues like wage disclosure. HCP is closely watching and will keep you informed about any changes in federal programs for Electronic Visit Verification (EVV) and VBP in the Certified Home Health Agency (CHHA) sector. We will be building on the excellent relationships we have with state lawmakers and begin building fresh relationships as newly-elected state legislators take their seats. And we will be calling on you - our members - to help us amplify our message. Through our Action Alerts and by building your own relationships with your local elected officials, you demonstrate engagement and expertise, both critical to the success of our Association.

To our members and friends, we thank you for your passionate delivery of services that keep people in their homes and communities. We appreciate the knowledge and experience you share with us, informing our work on your behalf. We are proud to stand with you in tough times and in times of hope and celebration and we are grateful - every day - that you choose to stand with us.

Onward - together.





**HCP 2022
LEGISLATIVE
RETROSPECTIVE**