

CHINESE-AMERICAN PLANNING COUNCIL HOME ATTENDANT PROGRAM (CPCHAP)

FREQUENTLY ASKED QUESTIONS RELATED TO HOME CARE

CPCHAP OVERVIEW

1) What is the relationship between the Chinese-American Planning Council Inc. (CPC) and the Chinese-American Planning Council Home Attendant Program Inc. (CPCHAP)?

CPC was founded in 1965 and is a social services nonprofit that serves more than 125,000 community members of all ages and backgrounds across all five boroughs of New York City. CPCHAP is a subsidiary nonprofit organization of CPC and was licensed by New York State to become a home care service agency in 1998. CPCHAP is 100% Medicaid funded.

2) What is CPCHAP's reputation?

CPCHAP has earned a reputation as a “go to” preferred agency among home care workers because we uphold the rights and dignity of each of our workers. The majority of our home care workers have been with CPCHAP for 5-10 years (higher than average in the home care sector), and 80% of our workers have previously been employed by other home care agencies. In a survey, our home care workers rate CPCHAP as 8 out of 10 in their satisfaction and report that CPCHAP reimburses for time that other agencies do not.

3) Is CPCHAP the largest home care agency?

No. CPCHAP has nearly 3,000 home care patients, all of whom are enrolled in Medicaid. While CPCHAP is among the largest nonprofit home care agency, there are many for-profit home care agencies with tens of thousands of patients.

4) How does CPCHAP receive its home care cases?

The New York City Human Resources Administration (HRA) and Managed Care Organizations (MCOs) assign home care cases directly to CPCHAP and stipulates the kind of care required for each case (e.g., daytime care, 24-hour care, etc.). Based on the number and type of cases received, CPCHAP recruits and employs home care workers to provide services. Home care services are based on the Patient's Bill of Rights, so home care agencies are not legally allowed to reclassify the number of hours of services that patients receive and that are mandated by HRA or MCOs.

5) What are the demographics of CPCHAP's workforce and patients?

In line with our organizational values, CPCHAP employs workers to provide culturally and linguistically appropriate services. Our patients are older adults and people with disabilities, who predominantly speak English, Chinese, Spanish, Korean, Russian, and/or Haitian Creole. Our workforce mirrors our patients.

6) Does CPCHAP comply with the Minimum Wage Act, Home Care Wage Parity Act, and Medicaid rules?

Yes, CPCHAP does comply with all these laws and regulations. Every audit by the NYS Office of Medicaid Inspector General (OMIG), HRA, MCOs, and independent accounting

firms have confirmed that we are in full compliance and have given us the highest ratings. CPC and CPCHAP continue to receive Medicaid and other public funding precisely because we comply with all laws and regulations. Audit reports are available upon request.

GENERAL HOME CARE FUNDING & COMPENSATION OVERVIEW

7) How does the Medicaid-funded home care system work?

The Medicaid home care system functions through a process by which patients who need care receive an initial assessment by HRA or MCO nurses to determine the type of care and the number of hours of service needed. The patient is then assigned through HRA or MCO to a licensed home care agency like CPCHAP. Medicaid funded home care agencies must – and are required to only – provide the type of care that is directly assigned by HRA or MCOs. Home care agencies cannot have a role in nursing assessments.

8) Who determines compensation for home care workers?

Home care regulations and compensation are determined by the NYS Department of Health (DOH) and Department of Labor (DOL), funded by Medicaid, contracted by HRA and MCOs, and backed by court decisions and union agreements. Home care agencies must comply with all of these rules and regulations. Home care agencies do not – and cannot – determine these regulations and compensation.

9) Are home care rates negotiable?

HRA provides the same reimbursement rate to all contracted home care agencies. MCOs and home care agencies can negotiate rates, and CPCHAP consistently does so when contracts are being renewed. We have declined contracts when rates do not adequately cover worker compensation and administrative costs, and we encourage patients to transfer to another MCO still contracted with CPCHAP if they would like to remain with us. When we decline a contract, CPCHAP is no longer permitted to provide those home care services, and the MCO would find another home care agency to hire those workers and serve those patients under the current reimbursement rates. Antitrust laws prevent home care agencies from sharing their Medicaid rates with each other.

10) What is Medicaid fraud?

OMIG investigates Medicaid fraud, which includes billing for services that were not provided, billing for unnecessary services, and billing for a more expensive service than was provided.

13-HOUR / 24-HOUR “RULES”

11) Are the hours provided by the State sufficient to provide quality care?

The State – through its Medicaid program – currently “caps” the total amount of funding allowed for any one home care case. What this means is that patients are often not granted the quantity of hours or type of care that is required to provide quality – or even adequate – care.

12) What is the 13-hour rule?

The 13-hour rule refers to the NYS DOL's interpretation of the state's Minimum Wage Order, where home care workers with 24-hour shifts are treated as "live-in employees" and are compensated for 13 hours of work, as long as the home care workers receive eight hours of sleep time and three hours of meal time. This interpretation is consistent with positions taken by DOL in previous decades and was reaffirmed by the NYS Court of Appeals' 2019 decision in *Andryeyeva v. New York Health Care*, a case that did not involve CPCHAP. The Court's decision, however, means that home care workers are not compensated for all 24 hours that they are in a patient's home. Home care workers are compensated for interruptions reported during the eight hours of sleep time (at least five hours of which should be uninterrupted) and three one-hour periods of meal time. CPCHAP's compensation for interruptions is not reimbursed by Medicaid.

13) Why do 24-hour cases exist?

A 24-hour case is defined as having a home care worker be present in the patient's home for a consecutive 24-hour period. Shifts typically last from 8 AM to 8 AM, although they can be adjusted slightly – more or less time – to accommodate patient or scheduling needs. Patients receive 24-hour home care when HRA or MCOs determine that they cannot be left alone and need some minimal tasks performed during the night. Home care agencies are required to provide the service as assigned.

14) How do 24-hour shifts become converted into two 12-hour split shifts?

Every 90 days, a HRA or MCO nurse conducts assessments of patients with 24-hour care. Based on the assessment, the nurse can recommend to DOH and MCOs that 24-hour shifts be converted into two 12-hour split shifts. The nurse returns every 90 days to confirm if split shifts should continue. Home care agencies can only recommend, advocate, and appeal for split shifts, but DOH and MCOs make the ultimate decision based on the nursing assessment. To date, few 24-hour cases have ever been converted to 12-hour split shifts during these 90-day assessments.

15) Are two 12-hour split shifts better than one 24-hour shift?

Split shifts are better for both home care patients and workers. Patients can remain in their homes with adequate care, and workers can have jobs with better compensation and dignity. Because of the growing needs of people with disabilities and an increasingly aging population, the home care sector is the largest employer in the nation. Yet, it continues to face shortages. A 2018–2019 survey of New York's home care agencies has shown that 17 percent of home care positions were left unfilled due to staff shortages. If the labor shortage continues, there is a fear that mandated split shifts could lead to increased institutionalization for older adults and people with disabilities.

NEW YORK STATE HOME CARE ENVIRONMENT OVERVIEW

16) How many home care cases and workers are there in New York State?

There are about 250,000 home care patients served by approximately 330,000 home care workers across New York. CPCHAP serves about 3,000 home care patients and employs about 4,500 home care workers.

17) How many 24-hour home cases and workers are there in New York State?

There are about 11,000 24-hour cases served by approximately 33,000 home care workers across New York.

18) When did 24-hour home care cases start in New York State?

Since the 1970s, 24-hour home care has been set and enforced by DOH via Medicaid.

CPCHAP'S STANCE ON 13-HOUR / 24-HOUR CASES

19) How many 24-hour cases does CPCHAP have?

CPCHAP has 49 24-hour cases, which is about 1.6% of its own caseload and less than 0.5% of the State's 11,000 24-hour cases. Each of CPCHAP's 24-hour cases has at least two workers providing care throughout the week. While CPCHAP represents a small percentage of all 24-hour cases, we understand that even one case is too many, and that is why we have been advocating for legislative reform and increased Medicaid funding for home care.

20) How many home care workers with 24-hour cases does CPCHAP have?

CPCHAP has 104 home care workers with 24-hour cases, which is less than 2.5% of its entire workforce and about 0.32% of the State's 33,000 home care workers with 24-hour cases.

21) Does CPCHAP have the authority to end 24-hour shifts?

No, home care agencies do not have the authority to end 24-hour shifts. Twenty-four-hour shifts are assigned and mandated by the State, and home care agencies like CPCHAP are legally not allowed to reclassify how cases are assigned by the HRA and MCOs. That said, DOH and MCOs do have the authority to convert 24-hour cases into two 12-hour split shifts. DOH describes the authorization process [here](#). Medicaid funding rules and formulas prevent CPCHAP – like the hundreds of other nonprofit home care agencies in the State – from converting 24-hour cases into split shifts without committing Medicaid fraud or abandoning patients, who are older adults and people with disabilities. The Governor and State Legislature have the authority to end 24-hour cases.

22) What has CPCHAP been doing to convert its 24-hour shifts into two 12-hour split shifts?

CPCHAP has been actively and aggressively advocating for its 24-hour cases to be converted into two 12-hour split shifts for many years, but it has only been successful in converting a handful of such cases. Because CPCHAP has been unable to split shifts on our own, the organization has proactively reached out to relevant State Legislators to [request that they intervene with DOH and HRA on our behalf](#). If there are home care agencies that have successfully split shifts on their own, we would welcome advice on how they have been able to do so within State rules and regulations.

23) How much reimbursement does CPCHAP receive for 24-hour cases?

As per the 13-hour rule, Medicaid only reimburses home care agencies for 13 hours of 24-hour cases, and CPCHAP is a 100% Medicaid-funded, nonprofit home care agency. HRA

or MCOs provide only 13 hours of reimbursement to CPCHAP for each 24-hour case, which is then provided to the home care worker as compensation. CPCHAP's compensation for interruptions is not reimbursed by Medicaid.

24) What is CPCHAP's position on the 13-hour rule?

CPC and CPCHAP have been on the record for years advocating that the 13-hour rule is unsustainable and unfair to home care workers, who deserve to be fully compensated for every hour in a patient's homes. CPCHAP is in full support of ending 24-hour shifts and providing two 12-hour split shifts going forward – and we would do so ourselves if we could. However, despite our best attempts, we have been unsuccessful because of State policies and Medicaid regulations. That is why we have requested intervention from legislators and have been advocating on these issues since 2017.

25) What happens when CPCHAP's home care workers report interruptions during 24-hour shifts?

When home care workers report interruptions during their 11 hours of sleep and meal time, CPCHAP has implemented an easy-to-use system for compensating home care workers for those interruptions. Medicaid does not provide additional reimbursement for those interruptions. These reimbursements are covered entirely by CPCHAP.

26) Does CPCHAP have the funding to pay for 24-hour shifts or back wages?

No, unfortunately CPCHAP does not have the ability to independently fund these levels. CPCHAP is a 100% Medicaid funded nonprofit home care agency, meaning that it is a legal entity organized and operated for a collective, public benefit and that every dollar CPCHAP receives must be allocated directly back into the care it provides. There is no "profit margin" for a State-funded nonprofit, so unfortunately we do not have excess funding. Further, nonprofit home care agencies do not receive Medicaid funding for the gap between the 13 hours Medicaid reimburses and the 24 hours HRA/MCOs assign the worker to stay in the patient's home. It is impossible for nonprofit home care agencies to pay this gap when they are 100% Medicaid funded. Specifically, CPCHAP has nearly \$200 million in revenues because we have nearly \$200 million in expenses. In fact, CPCHAP paid \$2.7 million for overtime, interruptions, transportation, training, PPE, and other compensation, which was not reimbursed and which led to a \$2.4 million deficit last fiscal year. CPCHAP's accountant certified audits are public documents and available for review.

27) Why can't CPCHAP use Medicaid-funding to pay for the remaining 11 hours?

Because CPCHAP is 100% Medicaid-funded, nonprofit home care agency, we are subject to all Medicaid rates, rules, and regulations. Like the other hundreds of nonprofit home care agencies around the State, Medicaid funding rules, specifically the 13-hour rule, prevent CPCHAP itself from compensating workers with 24-hour cases for the full 24 hours and from converting 24-hour shifts into two 12-hour split shifts. No funding source exists for the remaining 11 hours, and it would constitute Medicaid fraud if we did so with our allocated funding without Medicaid authorization.

28) Does CPC have the funding to help CPCHAP pay for 24-hour shifts and back wages?

No, CPC does not have the funding to help its subsidiary CPCHAP with 24-hour cases. CPC is a nonprofit social services organization with primarily government contracts. Nearly

98.5% of CPC’s funding is restricted by government/funder rules and can only be used for the program for which it is designated (e.g., childcare, youth services, job training, case management, senior centers, etc.). It is illegal for CPC to transfer this funding to home care or any other programs. CPC does not have an endowment, and any modest surplus is reallocated directly to programs the following fiscal year. The only way to provide retroactive payment for home care workers across the nonprofit sector would be for the State to establish a compensation fund.

29) Why does CPCHAP retain its 24-hour cases if it is opposed to them?

CPCHAP is contractually prohibited from closing its existing 24-hour cases because of the Patient’s Bill of Rights and home care regulations – not to mention we obviously feel a tremendous responsibility to these vulnerable patients and their families who would be left without care if their cases were to be dropped. We could transfer our 24-hour cases if another home care agency was willing to take them, but most agencies are similar to CPCHAP in that they adamantly disagree with 24-hour shifts and are avoiding new 24-hour cases. Some patients might also not receive the culturally and linguistically appropriate care that CPCHAP provides at other home care agencies. Ultimately, none of this “chess-playing” solves the systemic problem; all it would do is simply shift the responsibility from one home care agency to another home care agency.

HOME CARE ARBITRATION

30) Why are home care workers in arbitration?

CPCHAP respects all clauses of the collective bargaining agreement, which was ratified by the workers through a vote and which was then signed by union and agency leadership. This collective bargaining agreement includes the union’s three-step grievance process: resolution meeting, mediation, and arbitration. CPCHAP did not pursue this arbitration process. 1199SEIU decided to bring over 140 lawsuits against over 40 nonprofit home care agencies, including CPCHAP, into arbitration on behalf of workers in their union.

31) What is CPCHAP’s relationship with 1199SEIU?

CPC’s founders were union members, and we have long been a proud union organization. CPC has staff who are members of DC37 and CSA, and CPCHAP has workers who are members of 1199SEIU. CPCHAP home care workers democratically elected 1199SEIU to be their representative and advocate. While thousands of CPCHAP home care workers are unionized with 1199SEIU, unfortunately a dozen workers have chosen to align with a group which seeks to undermine the important work of CPC and CPCHAP and which seeks to discredit the union that their co-workers have democratically selected.

32) Why have other home care agencies settled?

The handful of home care agencies that have settled recently are for-profit organizations, are not unionized, and have actual violations of compensation rules. None of these agencies are participating in the 1199SEIU arbitration process. All of these agencies are being investigated by the NYS Attorney General’s Office and the NYC Department of Consumer and Worker Protection. CPCHAP is not under investigation by City or State agencies.

33) Is CPCHAP purposely delaying the legal process?

CPCHAP is committed to doing right by our workers, and we have been pushing for a

quick resolution to their disputes. We recognize that federal court is faster than state court in settling such legal matters. Through the union grievance process, we had previously attempted to settle through mediation in 2018. Since then, we have been pushing the arbitrator to expedite his decision. Any delays to the arbitration process have been caused by plaintiff's lawyers who have been challenging the veracity of the union grievance process for years and who have been pursuing alternatives which could yield greater attorney fees. We believe that the pending arbitration decision will at least begin to address some of the back pay issues, but we need to fix the home care system at its core going forward. As a CPCHAP home care worker with 24-hour shifts involved in the arbitration has said, "We need help from the state legislature to make the 24-hour workday illegal."

PUBLIC PERCEPTION OF CPCHAP

34) What do home care workers say about CPCHAP?

Through the arbitration, no home care worker has claimed that CPCHAP owes them compensation for overtime. Most of the other nonprofit home care agencies have had such claims arise in the arbitration. Reflecting the sentiments of a true representation of CPCHAP home care workers, one wrote the following in an anonymous survey: "I've worked for [CPCHAP] since 2017, and I can honestly say this has been the best company that I have ever worked for and with. They treat everyone like family and they do not discriminate. No matter your age, race, or gender, this agency makes you feel like you're part of their growing process and family."

35) What about the claims made by home care workers during protests and in Assembly Member Ron Kim's report?

CPCHAP will investigate any claim and will ensure any inappropriate behavior is addressed. If there is ever any inappropriate action or discourse, every home care worker has the ability – and responsibility – to report it to CPCHAP's management or 1199SEIU. Both CPCHAP and 1199SEIU would have taken firm, disciplinary measures against inappropriate behavior. Recently, we asked Assembly Member Ron Kim if he would provide details about the claims included in his 2022 home care report or arrange for the home care workers making the accusations in the report to participate in an investigative interview with their representatives present, and we are waiting for his response.

36) Why is CPCHAP being singled out?

CPCHAP is a high-road employer that consistently passes audits on worker compensation, has unionized workers, and was the first nonprofit home care agency to advocate for systemic reform for both home care workers and patients starting in 2017. The group that has been the organizer and instigator of the recent protests has a long record of animosity toward CPC. The group has made unsuccessful attempts over the past several decades to undermine CPC and the important services CPC and CPCHAP provide to community members every day. The problem we face in home care today is serious, real, and promises to cripple our community in the very short-term future. We cannot be more clear on this point. If we do not band together – as a home care community – and push for action from all our city and state officials, we will be looking at a very bleak future for our State's most vulnerable populations.

WHAT NEEDS TO BE DONE TO END 24-HOUR SHIFTS

37) Why do we need legislation to end 24-hour shifts?

The fact that CPCHAP is eager to eliminate 24-hour shifts and only offer 12-hour split shifts but is powerless to do so ourselves is precisely why we have been [advocating](#) for the legislation to convert 24-hour shifts to 12-hour split shifts (A3145A Epstein/ S359 Persaud). We continue to encourage other home care agencies with 24-hour cases to do the same and to advocate for State legislators to pass the legislation, which requires \$1.1 billion in Medicaid funding. This could also be accomplished by the Governor's executive order to amend the DOL rule and direct DOH to adjust Medicaid case assignments and reimbursement rates. There are no options for nonprofit home care agencies to end existing cases, retroactively compensate the 11 hours per shift that the State does not reimburse for, or provide 12-hour split shifts. Without State level intervention, there would be a full collapse of the Medicaid-funded home care industry, which would still not provide retroactive compensation to home care workers and would instead leave workers without jobs and patients without care.

38) Why do we need Medicaid funding to end 24-hour shifts?

CPCHAP provides home care to Medicaid patients who lack resources to pay for it on their own. New York State funds home care through Medicaid, and nonprofit home care agencies do not have the resources to cover the full 24 hours. While CPCHAP complies with all State and Federal laws, we recognize that being in compliance with these laws does not necessarily mean that they are just or fair for workers. This is why we have been advocating to eliminate the Medicaid cap and to mandate 24-hour shifts be converted to 12-hour split shifts for the entire home care sector, which would cost approximately \$1.1 billion in Medicaid funding per year to compensate the remaining 11 hours for all those 11,000 cases moving forward. Looking backward, we have also been advocating for the State Medicaid program to pay back workers directly for the difference between the 13 hours enshrined in DOL regulations and the 24 hours DOL requests staff to remain in patients' homes, which would cost the State approximately \$6 billion.

39) What is Fair Pay for Home Care?

CPCHAP has joined advocates, providers, workers, and unions to advocate for [Fair Pay for Home Care](#) (S5374 May/A6329 Gottfried), the legislation that would raise home care worker pay to 150% of the highest area minimum wage across the State. Along with converting 24-hour shifts to two 12-hour split shifts, Fair Pay for Home Care will lead to comprehensive reform of the home care sector to build a more just and caring economy in New York State. We believe that all reforms must center worker justice, particularly for Asian American, BIPOC, immigrant, and women workers who disproportionately bear the burden of care work.