

Nevada Home Care Workforce Board

Introduction

Prior to the spread of COVID-19, it was estimated that, within the next decade, Nevada would need to fill 25,300 home care job openings.¹ This prediction was based on the rapid expansion of the senior population and the preference of those in need of long-term services and supports (LTSS) to receive care in their homes and communities rather than institutions.² Given the current public health crisis, it is widely believed that the surge in demand for in-home caregivers will be even greater than previously estimated, as LTSS consumers are seeking to limit their potential exposure to the virus by receiving in-home care rather than care delivered in nursing homes, adult day facilities, or other congregate living arrangements.

While the need to attract and retain a dedicated home care workforce is clear, Nevada does not currently have policies in place to accomplish this goal. Specifically, Nevada's current policies do not adequately combat workforce shortages, guarantee that every home care worker has the necessary personal protective equipment (PPE) and training to protect themselves and their consumers, or ensure that seniors and people with disabilities who wish to receive care in their homes are able to.

Home care workers face many challenges that exacerbate the industry's high turnover rate³—including low wages, few benefits, insufficient training, strenuous travel schedules, and stressful working conditions. And their employers, home care agencies, are also facing challenges that threaten to make Nevada's care crisis even worse. As COVID-19 spread, Nevada's almost 300 home care agencies that provide non-medical, in-home care were left to figure out how to obtain PPE, effectively train workers on new safety protocols, create new backup plans for consumers, and recruit and retain workers in a field where workers face new health risks. While some agencies managed to adequately address these challenges, many were not able to provide the proper equipment or assurances to consumers or workers. These agencies would have greatly benefited from a more coordinated response and sharing of best practices.

With the possibility of another surge in COVID-19 on the horizon, Nevada needs to act quickly to establish a process for supporting the needs of frontline home care workers, enhancing and coordinating the practices that home care agencies follow, and assuring consumers that they can safely receive the in-home care they need. In order to achieve this, Nevada should create a tripartite home care workforce board to address the many challenges that this disaggregated and undervalued industry experiences.

Nevada's Home Care Workforce

In 2018, there were approximately 13,130 personal care aides providing home care (also called personal care, homemaker, companion, and attendant services) in Nevada.⁴ This workforce of mostly women

¹ Projections Central, 2016 to 2026 Long-Term Occupational Projections for personal care aides, job openings include both growth and separations. Available at <https://projectionscentral.com/Projections/LongTerm>

² Binette, Joanne and Kerri Vasold, 2018 Home and Community Preferences: A National Survey of Adults Age 18-Plus. Washington, DC: AARP Research, August 2018. <https://doi.org/10.26419/res.00231.001>

³ PHI, It's Time to Care: A Detailed Profile of America's Direct Care Workforce, 2020. Available at <http://phinational.org/resource/its-time-to-care-a-detailed-profile-of-americas-direct-care-workforce/>

⁴ Bureau of Labor Statistics, State Occupational Employment Statistics, May 2018. See occupational code 39-9021. Available at https://www.bls.gov/oes/2018/may/oes_nv.htm

(84%⁵) provides assistance with daily living activities—such as bathing, eating, toileting, and mobility—to seniors and people with disabilities who rely on these caregivers to live in the community rather than the more expensive and less desirable alternative of living in an institution. This workforce is also disproportionately made up of women of color. Women of color make up 17% of Nevada’s total population, but 35% of Nevada’s home care workforce.⁶

Prior to the pandemic, home care workers in Nevada made a median wage of \$11.07/hr⁷ and had median earnings of \$15,500/yr⁸. Making low wages and navigating inconsistent hours, 46% of home care workers in Nevada relied on some form of public assistance.⁹ In fact, many home care workers, who are providing a healthcare service themselves, could not afford to provide healthcare coverage for their own families. 32% of personal care aides in Nevada relied on Medicaid.¹⁰ And many home care workers did not have access to paid sick leave. Lastly, often citing low wages, one in two home care workers left the job within a year of taking it.¹¹ Since the spread of COVID-19, these realities have not significantly improved, and in some cases they have worsened.

Home care is an undervalued yet critically important profession. Home care workers deal with low earnings, few-to-no benefits, and a demanding job that often leads many to stay late and provide additional hours of uncompensated care because there is no one else to provide these services. Without significant improvements to this job, including instituting procedures to address the new risks workers are encountering due to COVID-19, Nevada is facing the potential collapse of this essential workforce.

Nevada’s Home Care System

The vast majority of home care in Nevada, and the US, is funded by Medicaid. Most individuals in need of LTSS cannot afford to pay out-of-pocket for in-home care—the median annual cost for private-pay home care in Nevada is \$51,480.¹² Additionally, Medicare does not provide long-term in-home assistance, as opposed to acute or temporary in-home assistance, as a standard covered benefit. This leaves Medicaid as the main payor for home care.

The vast majority of Medicaid-funded home care is provided under Nevada’s State Plan Personal Care Services program. Smaller populations of Medicaid-funded home care consumers receive care through the Frail Elderly Waiver and the Persons with Physical Disabilities Waiver programs.¹³ And there are

⁵ Guinn Center, Helping Hands: An Assessment of the Personal Care Aide Workforce in Nevada, 2020. Available at <https://guinncenter.org/wp-content/uploads/2020/08/Guinn-Center-Helping-Hands-PCAs-in-Nevada.pdf>

⁶ Guinn Center, Helping Hands: An Assessment of the Personal Care Aide Workforce in Nevada, 2020. Available at <https://guinncenter.org/wp-content/uploads/2020/08/Guinn-Center-Helping-Hands-PCAs-in-Nevada.pdf>

⁷ Bureau of Labor Statistics, State Occupational Employment Statistics, May 2018. See occupational code 39-9021. Available at https://www.bls.gov/oes/2018/may/oes_nv.htm

⁸ PHI, Workforce Data Center, NV state data last modified August 30, 2019. Available at <https://phinational.org/policy-research/workforce-data-center>

⁹ PHI, Workforce Data Center, NV state data last modified August 30, 2019. Available at <https://phinational.org/policy-research/workforce-data-center>

¹⁰ Guinn Center, Helping Hands: An Assessment of the Personal Care Aide Workforce in Nevada, 2020. Available at <https://guinncenter.org/wp-content/uploads/2020/08/Guinn-Center-Helping-Hands-PCAs-in-Nevada.pdf>

¹¹ Kate Bradford, Shoring Up the Long-Term Care Workforce, National Conference of State Legislatures, 2019. Available at <https://www.ncsl.org/research/health/shoring-up-the-long-term-care-workforce.aspx>

¹² Genworth, Cost of Care Survey 2019, available at <https://pro.genworth.com/riiproweb/productinfo/pdf/282102.pdf>

¹³ Note that Nevada’s Intellectual Disabilities and Related Conditions Waiver program does not provide services that would be considered home care.

three additional programs that provide publicly-funded home care to non-Medicaid population.¹⁴ For fiscal year 2018, 10,269 consumers received home care through the State Plan Personal Care Services program or one of the waiver programs and 502 consumers received home care through one of the non-Medicaid programs.¹⁵

Almost 300 home care agencies (also called personal care agencies) are licensed by the Nevada Department of Health and Human Services' (DHHS) Division of Public and Behavioral Health (DPBH) to provide non-medical in-home care, and the majority of these agencies (almost 200) are paid by the Division of Health Care Financing and Policy (DHCFP) within DHHS to serve Medicaid clients.¹⁶ Home care agencies tend to be small and independently operated. And while DPBH and DHCFP set broad provider qualification standards and Medicaid reimbursement rates, specific practices in terms of workers' actual pay, training, access to protective gear, provision of paid time off, and other policies vary agency to agency.

Medicaid Home Care Funding

Nevada lags behind the vast majority of states when it comes to investing in the provision of home care services. For fiscal year 2016, the most recent year of available data, Nevada ranked 46th nationally for Medicaid expenditures on home and community-based services (HCBS) on a per resident basis.¹⁷ This low per capita level of funding is driven in part by very low reimbursement rates. From July 2009 until December 2019, Nevada's reimbursement rate for personal care services was frozen at the rate originally set back in 2003 of \$17.00/hr. For that decade, this rate was consistently below the annual national average rate for state plan personal care services delivered through home care agencies as reported by the Kaiser Family Foundation.¹⁸

At the start of 2020, the reimbursement rate for personal care services was raised to \$17.56/hr. This was far from the \$23.81/hr the rate should be had it kept pace with inflation.¹⁹ Additionally, Nevada had no mechanism for ensuring that all or part of this rate increase got passed on to workers. Many workers have reported that they did not receive a wage increase after the rate increased—and it is not uncommon to hear from workers that they have not received a wage increase in years.

As of August 2020, budget cuts in response to the pandemic have reduced the reimbursement rate for personal care services to \$16.52/hr—the lowest level it has been since 2003. It is worth noting that based on the Economic Policy Institute's Family Budget Calculator, a home care worker residing in the Las

¹⁴ These programs are the Community Options Program for the Elderly, Homemaker Program, and Personal Assistance Services Program.

¹⁵ Guinn Center, *Helping Hands: An Assessment of the Personal Care Aide Workforce in Nevada*, 2020. Available at <https://guinncenter.org/wp-content/uploads/2020/08/Guinn-Center-Helping-Hands-PCAs-in-Nevada.pdf>

¹⁶ List of licensed personal care agencies available at <http://www.hfemsd2.dph.state.co.us/hfd2003/homebase.aspx?ftype=hca&Do=list>

¹⁷ S. Eiken et al, *Medicaid Expenditures for Long-Term Services and Supports in FY 2016*, May 2018. See Table J. Available at: <https://www.medicaid.gov/sites/default/files/2019-12/Itssexpenditures2016.pdf>

¹⁸ Kaiser Family Foundation, *Medicaid HCBS Program Surveys*. The annual report previously was titled "Medicaid Home and Community-Based Services Programs: Data Update" and has since been changed to an issue brief titled "Key State Policy Choices About Medicaid Home and Community-Based Services". The most recent report can be found at <http://files.kff.org/attachment/Issue-Brief-Key-State-Policy-Choices-About-Medicaid-Home-and-Community-Based-Services>, see Table 3.

¹⁹ Guinn Center, *Helping Hands: An Assessment of the Personal Care Aide Workforce in Nevada*, 2020. Available at <https://guinncenter.org/wp-content/uploads/2020/08/Guinn-Center-Helping-Hands-PCAs-in-Nevada.pdf>

Vegas/Henderson/Paradise metro area who is single and has no children would need to earn \$15.58/hr in order to meet the cost of living for that region.²⁰

While COVID-19 has caused significant strain to state budgets, it is important to recognize the role home care can play in containing the spread of the virus and mitigating further costs to the State. The care that home care workers provide to seniors and people with disabilities enables their clients to avoid unnecessary visits to hospitals and nursing homes. It is critical that Nevada devotes focused attention to setting sufficient reimbursement rates and requiring employers to pay an appropriate minimum wage to workers. Without these measures, the availability of enough dedicated caregivers to meet the future demand for home care services will be seriously compromised.

What is a Workforce Board?

Workforce boards are governmental bodies that bring together workers, employers, and the public to set minimum wages and other working conditions of employment on an industry-specific basis. These boards review relevant data and conduct investigations to determine new minimum standards such as: wage rates, paid leave policies, training standards, scheduling requirements, and portable benefit policies.

Workforce boards are different than state task forces or committees. The latter tend to only have advisory responsibilities and are often comprised of members of government or individuals appointed by the executive branch. However, workforce boards have greater authority to actually determine industry standards, and membership typically includes workers, employers, and members of the public.

Five states have existing statutes enabling the creation of workforce boards, also referred to as wage boards. Arizona (only for minors), California, Colorado, New Jersey, and New York all have laws authorizing the establishment of tripartite workforce boards.²¹

Who Would Benefit from a Home Care Workforce Board?

Home care workers across the industry would benefit from a workforce board. A workforce board would give workers a venue to help shape industry-wide policies on topics such as training and the distribution of protective gear. Additionally, COVID-19 has created a heightened need for better communication with home care workers. As questions and changes to policies arise throughout this pandemic, it is imperative that Nevada creates a system to better receive and distribute vital information to these frontline workers. The first wave of COVID-19 has demonstrated that not every worker can rely on their employer to effectively relay information or set appropriate policies. Finally, low earners would benefit from a home care-specific minimum wage set above the state's minimum wage, and higher earners would benefit from the development of a wage scale that rewards skills and experience. The wage-setting role of a workforce board is critically important as Nevada wrestles with how to attract and retain home care workers to meet current and future demand.

High-road home care employers would benefit as well. COVID-19 has exposed the need for higher standards and greater coordination across this industry. Home care agencies have had to grapple with the challenge of acquiring PPE, implementing sufficient training and backup protocols, and recruiting and retaining workers during this pandemic. Agencies could have benefited from information sharing as well as consistent procedures—especially since some workers are employed by multiple agencies. A

²⁰ Guinn Center, *Helping Hands: An Assessment of the Personal Care Aide Workforce in Nevada*, 2020. Available at <https://guinncenter.org/wp-content/uploads/2020/08/Guinn-Center-Helping-Hands-PCAs-in-Nevada.pdf>

²¹ See CAL. LAB. CODE §§ 70–74, 1173, 1178; COLO. REV. STAT. § 8-6-109-112; N.J. STAT. ANN. § 34:11-56a4.7, a8, a9; N.Y. LAB. LAW § 653-659; and ARIZ. REV. STAT. ANN. § 23–314-322.

workforce board would standardize home care workers' pay across the industry and ensure that home care agencies that properly support workers are not undercut by agencies that offer lower compensation. Furthermore, high-road agencies could gain a larger portion of the market and benefit from economies of scale should low-road agencies transition out of the market. Lastly, setting economic standards at the industry-level would encourage more cooperative relations between workers and employers at the firm-level.

And importantly, home care consumers would greatly benefit from the creation of a home care workforce board. As COVID-19 spread, consumers experienced a crisis of confidence. Uncertain whether they could receive in-home care safely, many refused the care they needed in order to avoid unnecessary visits to a hospital or nursing facility. With no end to the pandemic in sight and the real possibility that a second surge could occur, all home care consumers need to be assured that the industry is taking the proper measures to keep workers and clients safe. This cannot be achieved through fragmented agency-by-agency policies. Industry-wide standards must be developed. Furthermore, by setting wages that recognize the hard work and skills that go into providing home care and ensuring that home care workers are not burdened by the consequences of poverty wages, a workforce board would reduce turnover and the loss of knowledge that is associated with high turnover. A number of studies in various direct care settings have noted the negative impact of turnover on quality of care.²² One study examining turnover before and after home care workers in San Francisco received a wage and health benefit increase revealed that turnover *fell by 30 percent* and the supply of workers *increased by 54 percent*.²³

Why Does Nevada Need a Home Care Workforce Board?

There is a clear need to address the many challenges facing the home care industry in Nevada to ensure the longevity of the provider network and the safety of consumers. The reason why a workforce board is the ideal approach for achieving this lies in how the home care industry, and its many stakeholders, are structured.

The home care industry is uniquely disaggregated. Workers are spread out across the state without a common worksite. Hundreds of home care agencies in Nevada function in a highly unconsolidated market and set their own varying workforce standards. Additionally, consumers operate independently in their own homes and must oftentimes be self-advocates. Finally, industry oversight responsibilities are split across the Division of Health Care Financing and Policy (which oversees publicly-funded home care programs), the Division of Public and Behavioral Health (which oversees the licensing of home care agencies), and the Office of the Labor Commissioner (which enforces labor laws and investigates employment complaints).

In order to address the looming care crisis, Nevada needs to create a central venue to bring together the opinions and experiences of all these stakeholders. Without focused attention and investment in home care, we have seen the Medicaid reimbursement rate sit frozen for a decade at a level set back in 2003 and since reduced even lower than the 2003 rate to a level that caused one of the largest in-home care providers, Addus Homecare, to shut down—leaving about 300 workers out of jobs and about 43,000

²² Testimony of Zabin, C., in Sanchez v. Johnson, Case C-00-01593 CW, “Labor standards and quality of care in California’s services for people with developmental disabilities” (2003); Seavey, D., Better Jobs Better Care, “The Cost of Front-Line Turnover in Long Term Care” (2004); Reif, L., “Paying for Quality: Preliminary Analysis of San Francisco In-Home Supportive Services Consumer Evaluation of Quality of Care Findings,” presented at the IAFFE Conference on Feminist Economics, Los Angeles, CA (July 12-14, 2002).

²³ Howes, C., “The Impact of a Large Wage Increase on the Workforce Stability of IHSS Home Care Workers in San Francisco County” (2002). Refers to reduction in “bad turnover”: turnover where the consumer remains in the service and the provider leaves.

consumers in need of finding care elsewhere.²⁴ Additionally, there are many non-economic working conditions that need to be improved to support home care workers, agencies, and consumers.

A home care workforce board would establish an enduring venue and process to evaluate and regularly modify the wage and workforce standards for the industry, bringing together many disparate voices and compelling them to create policies that work for each represented constituency. No single stakeholder, including any one of the three state entities with oversight responsibilities for this industry, has a complete picture of the considerations that need to go into setting appropriate wage and workforce standards for this industry.

Workforce Board Creation and Process

Nevada does not currently have a law specifically granting the authority to convene workforce boards or giving authority to a tripartite board as a mechanism for labor standard setting. However, this can be achieved by expanding the authority that the Commissioner of Labor already has under state law.

Currently, Nevada law provides that “[w]hen an enforcement question is presented under any labor law of the State of Nevada, the determination of which is not exclusively vested in another officer, board or commission, the Labor Commissioner or a person designated by the Labor Commissioner may conduct a hearing in any place convenient to the parties, if practicable, and otherwise in a place chosen by the Labor Commissioner”.²⁵ Any decision by the Commissioner has the force of law and the Commissioner must issue a written decision within 30 days “setting forth findings of fact and conclusions of law developed at the hearing.”²⁶

As discussed earlier, the home care industry is facing many unique challenges that stem from how it is structured and what the industry is facing during the current pandemic. As such, Nevada’s legislature should create a process for setting labor standards that (1) is more long-term than a one-off hearing and (2) allows for the investigation of and setting standards for topics beyond a singular enforcement question under labor law (for example, COVID-19 safety procedures). This can be achieved by amending state labor law to allow the Commissioner of Labor to convene a tripartite home care workforce board. Elements of the new law are outlined below.

Convening the board - The Labor Commissioner shall convene the Board upon receiving a petition from no less than fifty (50) members of the home care workforce. The Labor Commissioner shall determine the date of the first board meeting and prior to such meeting the Labor Commissioner shall conduct an initial investigation into the wages, working conditions, and compliance with relevant laws within the home care industry and share their findings with the board members.

Board composition - The Board shall be chaired by the Labor Commissioner or the Commissioner’s designee. Board members shall be three representatives of home care agency employers and three representatives of home care workers. Board members shall be appointed by the Governor after a public request for interested parties to submit applications for board membership has been posted. Board members serve on a voluntary basis and shall not receive compensation for their service.

²⁴ [https://homehealthcarenews.com/2020/09/home-care-is-coming-to-a-crisis-medicaid-cuts-to-push-addus-out-of-nevada/#:~:text=Addus%20HomeCare%20Corporation%20\(Nasdaq%3A%20ADUS,and%20home%20health%20care%20services.&text=Addus%20is%20slated%20to%20end%20its%20operations%20in%20Nevada%20in%2060%20days.](https://homehealthcarenews.com/2020/09/home-care-is-coming-to-a-crisis-medicaid-cuts-to-push-addus-out-of-nevada/#:~:text=Addus%20HomeCare%20Corporation%20(Nasdaq%3A%20ADUS,and%20home%20health%20care%20services.&text=Addus%20is%20slated%20to%20end%20its%20operations%20in%20Nevada%20in%2060%20days.)

²⁵ Nev. Rev. Stat. 607.207

²⁶ Nev. Rev. Stat. 607.215

Topics for investigation - The Board's mission shall be to investigate the wages, working conditions, and compliance with relevant laws for the home care industry. Each board convened shall determine the topics it will investigate. In doing so, the Board shall consider, but not necessarily be limited to, the following topics: reimbursement rates and wages, training (e.g., adequacy of minimum standards, new COVID-related training, enforcement, who pays for training, and portability across employers), paid sick time, transportation benefits, and employee protections (e.g., wage and hour violations, "pay day" loans, race and gender based discrimination).

Board report - The board shall vote on recommendations and those that are supported by at least half of Board members shall be included in the board's final report, which shall be released publicly online. A Board's final report shall be released no later than one year from the Board's first meeting.

Orders by the Commissioner - If the Commissioner approves of any recommendation of the Board as described in the report, the Commissioner shall issue an order to adopt and effectuate the recommendations of the Board. The Commissioner may also disapprove any Board recommendation or recommit the subject(s) to the same or a new Board. Any such order by the Commissioner takes effect thirty (30) days after the order is adopted and operates with the force of law.

Employee protections - Any employer who discharges or threatens to discharge, or in any other way discriminates against an employee because such employee serves on the Board, or is active in its formation, or has testified or is about to testify, or because the employer believes that the employee may testify in any investigation related to enforcement of this act, or the employer believes that the employee is engaged in concerted activity, is guilty of a misdemeanor and, shall violate this act and may be fined \$1,000 for each violation.

Board terms - Each Board shall set its own meetings and determine the frequency of meetings necessary to produce a final Board report. A new Board, which may consist of new or returning members, shall be convened every two (2) years so long as the conditions for convening the board (i.e. petition from at least 50 home care workers) are reestablished.

Conclusion

Now more than ever, Nevada needs to create a system for addressing the many concerns and challenges facing home care workers, employers, consumers and the State. There is a clear need to gather the opinions of all these stakeholders in order to develop critical industry-wide policies that will ensure the availability of home care workers, the safety of consumers, and the coordination of employers. A home care workforce board will create an enduring venue to gather input and craft much needed workforce standards. Failure to recruit and retain a home care workforce that can safely provide in-home care to consumers would likely lead to worse health outcomes for consumers and increased costs for the State in the form of unnecessary hospital and nursing home visits.

In the face of the increasingly critical need to build a workforce that can safely and capably provide in-home care, Nevada should pass legislation giving authority to a tripartite board as a mechanism for labor standard setting in the home care industry. A recent survey from Data for Progress demonstrates strong support for "wage boards" among likely voters. Seventy-three percent of all respondents, and over half of Republican respondents, voiced support for "wage boards"—the highest level of support polled across seven different pro-worker policy proposals.²⁷ A home care workforce board promises to be a popular and effective way for Nevada to build a long-term, sustainable solution to the enduring home care crisis.

²⁷ Data for Progress, What Americans Think about Worker Power and Organization: Lessons from a New Survey, 2020. Available at <http://filesforprogress.org/memos/worker-power.pdf>