

G. UNREGULATED WORK IN THE HOME HEALTH CARE INDUSTRY IN NEW YORK CITY

Long-term care for the elderly and disabled has historically taken place in nursing homes but, in a major industry shift, is increasingly being provided in clients' homes. The number of home care workers in the city (more than 60,000) doubled over the last decade and a half, driven by a complex set of forces including shorter hospital stays that push recovery into the home, as well as an aging population that is exceeding the supply of nursing home beds. But it is the economics of the industry that has been the main driver: wages and working conditions in home-based care are lower than in nursing homes or hospitals. And while part of the home care workforce is unionized, segments of the industry remain vulnerable to workplace violations, especially in the unregulated "gray market."

HOW THE INDUSTRY WORKS

Long-term care is generally provided by **home health attendants**, who help the client in and out of bed and assist in daily activities such as cooking, cleaning and shopping. Post-acute care is usually provided by **home health aides** who, in addition to the work performed by attendants, perform basic medical tasks such as taking temperature, removing bandages, and assisting with medical equipment.

The central fact shaping the wages of home care workers is that the majority of home health care is funded through public insurance (largely Medicaid, though also some Medicare). But the growing fiscal constraints on public health insurance programs have meant that wages for front-line workers are kept chronically low. In addition, home health care in New York is contracted out to agencies, sometimes in multiple tiers, which in the end can take as much as 50% of the public funding for overhead and administrative expenses.

Offsetting these trends, in New York City home health attendants are largely unionized and covered by the

city's living wage law, so that workers currently earn at least \$10 an hour and have access to health benefits (although it may be difficult for them to work enough hours in a month to meet the eligibility requirements). Attempts to unionize home health aides are more recent, however, and so wages are lower and access to health benefits uneven.

There is also a sizable unregulated "gray market" in home health and elder care, in which clients directly hire workers with their own personal funds. (As a result, estimating the size of this market is very difficult.) The "gray market" serves clients who are ineligible for public funding, or who have run out of it and don't have the funds to buy their own insurance. Because payment to the worker is direct, without overhead, hourly wages can be higher than that paid by agencies. However, the terms of employment are negotiated on a case by case basis, and so wages and working conditions vary wildly from one job to the next. In the words of an industry trade group representative, "The disadvantages are not being protected by regulations, lack of safety and no supervision."

THE WORKERS & MOBILITY

The large majority of home care workers are women, and many are immigrants. Some worked in health care in their home countries (often at a higher level of skill), while others have worked as nannies, housekeepers, or in other low-wage jobs such as retail. In order to work for agencies, home health attendants must receive an initial 40 hours of classroom training while aides must receive 75 hours. Training is often provided by home care agencies for free, as well as by private schools that charge \$300 - \$500 per course; the latter are infrequently used because of poor track records. While difficult, some home health workers may become Certified Nursing Assistants with additional training, but the educational requirements needed to make the further jump to nursing is a steep barrier.

WORKING CONDITIONS & VIOLATIONS

Home health care work is physically, mentally and emotionally demanding. Many workers are proud of the care that they give their clients, but at the same time are frustrated by lack of respect, low wages and unstable work schedules.

As described in Table G, home health attendants are treated as exempt from the minimum wage and overtime requirements of the federal Fair Labor Standards Act (FLSA). This exemption is currently being challenged in court and may ultimately be eliminated. But in the meantime, home health attendants are only eligible for the state's lower overtime rate of 1.5 times the minimum wage (rather than the worker's regular hourly wage). The result is that for years, many workers in this industry have been working more than 40 hours a week without receiving full overtime pay. One trade group representative estimated that if all attendants were covered by the higher FLSA overtime rate, it "would bankrupt the system." In our analysis, this payment of the state's substandard overtime rate is substantively a violation of core workplace standards and therefore an example of unregulated work, since attendants are recognized as being in an employment relationship (see Section III for a fuller treatment of how we define unregulated work).

Some clients need 24-hour care, in which case workers "sleep in," usually for three or four days in a row. In these cases, they receive a sleep-in rate, but eight hours can legally be unpaid for sleep time. In our analysis, this is another example of a substantive violation of workplace standards, since workers are essentially on call the entire night to provide care to the client.

In the "gray market," working conditions are determined by negotiations with the client and his or her family. While some agency workers are able to demand as high as \$12-\$15 an hour in side deals, other workers rely solely on the "gray market" for jobs and may be forced to bid their wages down to the minimum wage or lower and take on additional tasks. But there is vulnerability even for established agency workers. In the eyes of one industry analyst: "It is not good for the workers to make these deals because the families can use it as a form of leverage against the worker. ... For example, the family can take advantage of the worker by threatening to tell the agency that she is breaking the rules by having a side deal, if she does not comply with performing other types of work."

Home health work entails health and safety risks that can be exacerbated by insufficient training. Workers who do not learn the proper means of protecting themselves from diseases, particularly airborne and blood-borne diseases, are at a higher risk of contracting illnesses from clients. Similarly, those who do not learn proper lifting techniques are more vulnerable to back injury.

Finally, home care workers talk about the endemic problem of "job creep" – being asked to do work beyond the scope of their responsibilities. One former health attendant recalls, "You have to deal with the family, who maybe wants you to do their work, like the laundry and going shopping, and that's not what you're there for. If they don't clean up you have to clean up but you're only supposed to be cleaning the area around the patient. You get accused of things you didn't do."

TABLE G.
CHARACTERISTICS OF UNREGULATED WORK IN THE HOME HEALTH CARE INDUSTRY
IN NEW YORK CITY

Note: Some home care workers are exempt from one or more employment or labor laws. In this table, we evaluate working conditions as if workers were covered by all employment and labor laws; see our definition of unregulated work in Section III.

| INDUSTRY SEGMENTS WHERE WORKPLACE VIOLATIONS ARE COMMON | |
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| Industry segments | Violations are common in the “gray market” segment of the industry where workers are employed directly by clients. Overtime violations are also effectively present for some workers employed by home care agencies. |
| Ownership and size | “Gray market” employers are individual clients or their families. Home care agencies are service providers under contract, either directly or indirectly, with the city or state. |
| Union density | Union density among home care attendants in New York City is high, but weak for home care aides (see narrative above for description of categories of workers). |
| THE JOBS WHERE WORKPLACE VIOLATIONS ARE COMMON | |
| Occupations | “Gray market” workers and home health attendants are the most affected by violations. Home health aides may also experience violations, although to a lesser degree than attendants. |
| Typical wages | When working for agencies, aides average around \$7-\$8 per hour, while attendants average around \$10 per hour. There are also higher pay rates for weekends and “sleep-in” shifts. In the “gray market,” workers can earn as much as \$12-\$15 per hour, but wages vary widely from one job to the next. |
| Typical hours | Hours are highly irregular. Shifts can run very long, with multiple clients in a day stretching into night, but at the same time, workers may find it difficult to obtain enough hours in a given month. |
| Payment method | Agency work is on the books, but “gray market” work is usually off the books. |
| Benefits | Workers in the “gray market” usually do not have health benefits or paid time off. Most attendants employed by home care agencies are unionized and have access to health benefits and some paid sick days and vacation days. Unionized aides have health benefits, but non-union aides often do not. Aides usually do not have paid time off. |
| THE WORKERS MOST AFFECTED BY WORKPLACE VIOLATIONS | |
| Demographics | Women make up more than 90% of the workforce, which is also increasingly immigrant (Caribbean, Filipina, and Latino). |
| Immigration status | The vast majority of agency workers are documented, but the “gray market” likely has more undocumented workers. |
| INTERMEDIARIES PLACING WORKERS IN UNREGULATED JOBS | |
| Key intermediaries are home health care services agencies that train and place workers in jobs throughout the city. Some private schools also provide training, but charge workers a fee and are less frequently used. Some storefront employment agencies place home care workers in the “gray market.” | |
| INDUSTRY-SPECIFIC LAWS AND REGULATIONS | |
| <p>Wage and Hour Laws: Home health attendants are currently exempt from minimum wage and overtime protections of the Fair Labor Standards Act (FLSA) and are therefore only covered by the state’s overtime rate of 1.5 times the minimum wage. For 24-hour sleep-in shifts, eight hours may legally be unpaid (with a “sleep-in” rate added to wages). Home health attendants are covered by the New York City Living Wage Law, which as of July 2006 mandates \$10 an hour in wages and \$1.50 an hour in health benefits.</p> <p>Screening: A physical exam and drug screen is required; fingerprinting and background checks were instituted in 2005.</p> | |

COMMON WORKPLACE VIOLATIONS

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| Minimum wage and overtime | <p>Minimum wage: Workers in the “gray market” may negotiate weekly wages with clients that translate into sub-minimum wages, once full hours and night work are taken into account.</p> <p>Overtime: Home health attendants do not receive full overtime pay when working more than 40 hours, and “gray market” workers almost never receive overtime. For “sleep-in” shifts, 8 of the 24 hours may go unpaid.</p> |
| Illegal deductions | Workers report instances of having to “pay off” training by working additional time. Kick-backs also exist for good assignments or additional hours. |
| Meal breaks | Workers report that the inherent nature of home care work interferes with the ability to take meal breaks; “gray market” workers in particular may be unable to assert this right. |
| Employer taxes | Taxes are generally not paid by “gray market” employers. |
| OSHA | Health and safety precautions may not be properly monitored because the work takes place off-site in clients’ homes. “Gray market” workers may not have received mandated health and safety training. This can lead to insufficient protection from diseases, particularly airborne and blood-borne diseases, and back injuries due to improper lifting techniques. |
| Workers’ Compensation | Workers may be reluctant to report injuries because of a fear of retaliation, or fear of loss of hours. “Gray market” employers generally do not carry workers’ compensation. |
| Retaliation & the right to organize | When workers move into the “gray market,” they may end up in same position as domestic workers, and be exempt from the right to organize. |

Note: All violations were assessed using legal standards in effect when interviews were conducted, and in particular, wage rates are from 2003-2005.

Sources: Original data gathered by authors during fieldwork from 2003 through 2006 in New York City, as well as the following secondary sources: SEIU Local 1199 (2003), Boyer (2003), The Center for Workforce Studies (2005), Cobb (2002), Dawson and Surpin (2001), Green (2001), Greenhouse (2004c), New York Association for Homes and Services for the Aging (2001), New York State Department of Labor (2007c), Office of the New York State Attorney General (2004a), Office of the New York State Attorney General (2005a).