

State Democrats push home health aide reform

By Amanda Eisenberg

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Thirteen New York Democrats are pushing a new bill to place limits on the maximum amount of hours a home care aide can work — a plan that would cost the state billions of dollars without a clear source of funding.

Home care workers in New York are subject to the 13-hour workday rule, which means they are not entitled to be paid for the full 24 hours they are on duty to provide live-in care. The bill, [NY S6640 \(19R\)](#), would establish a law to overturn the 13-hour rule — which the New York Court of Appeals [upheld in March](#) — and cap home worker shifts to 12 hours, according to officials at a press conference in Manhattan Wednesday.

"Twenty-four hours is inhumane. No one should be working 12 hours without a break," bill co-sponsor Sen. Roxanne Persaud (D-Brooklyn) said to a crowd of about 40 people, many of them home care workers. "It is unhealthy for the worker, and it's unhealthy for the patient. It is a safety hazard, and we've got to stop that."

The state is not required to pay live-in aides for eight hours of sleep time, as long as at least five hours were uninterrupted. It is also not required to pay for three hours of meal time, which is why some workers only receive 13 hours of pay, according to the Department of Labor's interpretation of the rule. Assemblywoman Jo Anne Simon (D-Brooklyn) described the practice as "involuntary servitude."

"That is unconscionable and unconstitutional," she said. "This is America. This is New York state. What are we doing?"

The bill, however, may wind up hurting more workers — often women and immigrants — than it aims to help, observers said.

The state may reduce rates or shifts to make up for New York's Medicaid global cap shortfall if the 12-hour limit is implemented, according to two experts. The global cap aims to keep Medicaid spending in line with medical inflation ([about 3.2 percent](#)), according to the state, which [set its global cap spending target](#) at \$20.8 billion in the 2019 fiscal year, according to a March 2019 Medicaid report.

"[Home care is one] area of our Medicaid program [that] has been growing very rapidly," said Bill Hammond, director of health policy at the Empire Center, a conservative think tank. "That is one of the reasons we went over budget last year. It's what drove [that reform to the consumer directed program](#) as an attempt to get a handle on those costs. This would compound that."

The state tried to cut \$75 million from the Consumer Directed Personal Assistance Program, or CDPAP, which pays contractors to connect home care aides to senior citizens, to cut down on Medicaid overspending, said Roger Noyes, a spokesperson for the Home Care Association of New York State.

"The state is looking at any way to cut costs in the Medicaid program," he said.

The New York State Department of Health, which oversees Medicaid, did not respond to a request for comment on potential cost concerns.

The bill, Noyes added, may make the job more untenable for home health aides if they are capped at a 50-hour work week — further aggravating the workforce shortages. About 17 percent of [home health aide jobs are unfilled](#), according to an association report from 2019.

Elected officials dismissed the concern.

"If there is a crisis in workers, it's because we're telling people to work 24 hours and only pay them for 13," said Assemblymember Harvey Epstein (D-Manhattan), another co-sponsor. "If we do a split shift, we will get rid of the crisis because people will get paid for the hours they work."

He added: "It is our job to ensure that there is a budget available and we need to do that."

The legislators said they will fight to pass the bill when session resumes in January, though they are likely to face opposition from fiscal conservatives and potentially the Cuomo administration over the cost.

"To put in a bill that would dramatically increase the expense of the program without doing a financial analysis, that's irresponsible," Hammond said.