

## Congress Has a Once-in-a-Generation Opportunity to Advance Racial and Gender Equity for Working Americans by Investing in Home Care Infrastructure

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### EXECUTIVE SUMMARY

Despite providing vital caregiving services on the frontlines of the global pandemic, home care workers continue to go without basic workplace protections and labor rights to degrees that vary widely across states. As Congress moves to fund landmark social reform policies in the Biden Administration's \$3.5 trillion Build Back Better plan through budget reconciliation, it is crucial to prioritize a \$400 billion investment in home- and community-based services (HCBS) infrastructure that includes pro-organizing measures tied to states' receipt of enhanced federal Medicaid funding. Congress has a once-in-a-generation opportunity to create a federal jobs program aimed at the majority women-of-color home care workforce that promotes racial and gender justice, rather than upholding the status quo of poverty-wage employment and exploitation that stunts recruitment and retention in the country's fastest growing labor sector.

### INTRODUCTION

Millions of home care workers today provide essential long-term services and supports (such as bathing, dressing, feeding and food preparation, and medication assistance) to older adults and people with disabilities. These home- and community-based services (HCBS) are primarily funded through federal Medicaid matching dollars and administered and legislated through states. Despite providing essential care that allows many Americans to remain in their homes and communities rather than be institutionalized in nursing homes and other facilities, home care workers are some of the most underpaid and occupationally segregated workers in the country, and in many states, have been intentionally denied the right to organize and join a union.<sup>i</sup>

The legacy of undercompensated work in the home care field is rooted in the institution of chattel slavery and the conceptualization of care work as "Black women's work" – a racist and sexist holdover that persists today through the denial of essential workplace protections, poverty wages, minimal benefits and lack of access to advancement or retirement experienced by home care workers.<sup>ii</sup>

### ABOUT CENTER FOR EQUITY

*The Center for Advancing Racial Equity and Job Quality in Long-Term Care (The Center for Equity) is a national hub for developing innovative workforce policy and fostering narrative change in long-term care (LTC). Our work centers the majority Black, Indigenous and people of color (BIPOC) women and immigrant caregiving workforce and confronts the links between systemic racial and gender inequities and poor job quality. We unite diverse stakeholders in service of building the equitable caregiving infrastructure our nation needs.*

*The Center for Equity is an initiative of the Healthcare Career Advancement Program (H-CAP), a national labor/management organization which works with employers, unions and workers to raise standards across the healthcare industry. The initiative is generously funded by the W.K. Kellogg Foundation.*

Learn more at our website: [centerfortcequity.org](https://centerfortcequity.org)

### *The Better Care Better Jobs Act (BCBJ) Blueprint*

#### Expanding and Strengthening Home Care Infrastructure:

The bicameral BCBJ Act (Sen. Casey and Rep. Dingell, 2021) creates a blueprint for implementing the \$400 billion care infrastructure investment outlined in Biden's Build Back Better plan.

The BCBJ Act creates the policy scaffolding for states to receive enhanced federal funding to develop HCBS improvement plans, identify gaps and disparities in their existing Medicaid HCBS programs, diagnose workforce challenges, and design appropriate, equitable, and sustainable services with stakeholder input.

Key provisions include:

- Increasing Medicaid payments for HCBS by overhauling rate-setting to promote consumer care access and improve workforce recruitment/retention.
- Ensuring HCBS Medicaid rate increases improve worker wages and benefits.
- Requiring federally standardized qualification measures and training opportunities for direct care workers and family caregivers.

#### *Highlight on Innovation*

Critically, states will receive an additional 2% federal HCBS Medicaid match if they create/improve models for consumer self-directed care delivery. Through systems like the independent provider (IP) model, consumers can hire the home care worker of their choice in accordance with independent living principles, and workers benefit from having the state or a non-profit entity as their employer for purposes of payment and collective bargaining. Innovative policy solutions like these improve both care quality, access and labor protections that benefit the entire system.

Source:

[Better Care Better Jobs Act Senate Summary](#)

Creating a pathway to good, union careers in home care would not only improve care quality for Americans who utilize HCBS to live safely in their communities, but also extend basic labor rights and family-sustaining wages and benefits to millions of primarily Black and brown women caregivers.

## WHY GOOD, UNION JOBS ARE NECESSARY TO QUALITY CARE INFRASTRUCTURE

Despite a dearth of federal leadership historically to address the legacy of poor job quality, home care workers in many states have won the rights to organize over the past few decades, allowing workers to engage in collective bargaining and join unions to amplify their voices across isolated in-home worksites. This state-by-state advocacy strategy is necessitated by the exclusionary federal labor policies against home care and other domestic workers—the majority of home care aides (about 70%) work as “independent providers” for people with disabilities in private homes and receive reimbursement from the state through Medicaid to pay for workers’ services, but have no path to organize a union unless state laws are changed to make the state (or a specially created agency) the worker’s “employer of record for bargaining purposes, often called a “public authority,” or “home care authority” (HCA).”<sup>iii</sup>

The successful worker advocacy efforts beginning in the 1980s and 1990s led to several states such as California, Washington, Massachusetts, Illinois, and more, extending collective bargaining rights to home care workers through executive actions, state legislation, ballot measures, or combined methods to change state laws. Workers in those states subsequently won workplace protections that lift women of color and their families out of poverty and support quality care for consumers who rely on HCBS. In the seven states with HCAs, home care workers earn wages above the national average, and all are on track to reach or are already above \$15/hour in their current contracts, and also have greater access to other benefits such as secure health care, paid time off, retirement, and more, through negotiations with HCAs.<sup>vi</sup>

**“Way back when I started, I was getting paid \$3.90 an hour. That was before there was a union. At the time, I knew nothing about unions. I wasn’t a fighter then. When I stopped working, I was making \$13.85 an hour. When we unionized, we fought for paid training, paid time off, benefits, health insurance, and life insurance.”**

**–Lynda, Illinois Home Care Worker (Source: [NELP](#))**

For example, after the FLSA exemption of home care workers from federal minimum wage and overtime protections ended in 2015, a survey study comparing unionized and non-unionized home care workers found that permitting home care workers to form unions has many positive measurable impacts, including improving working conditions and reduced turnover due to workers accessing higher wages, more stable jobs, training and benefits that helped them remain in the caregiving workforce.<sup>vii</sup> The positive impacts from a healthy, unionized workforce also translated to higher quality care for consumers.<sup>viii</sup>

Unfortunately, many home care workers living in states with “right-to-work” laws still lack access to the right to organize to improve their working conditions and reduce workforce shortages. The impact of low rates of unionization on poor job quality in those states unfortunately has parallel negative impacts on older adults and people with disabilities who need quality HCBS: the vast majority of the nearly 820,000 people on Medicaid HCBS waiting lists (over 78%) live in right-to-work states where workers are less able to join strong unions.<sup>ix</sup>

## THE BLUEPRINT FOR EXPANDING UNION CAREERS IN HOME CARE

As highlighted in the sidebar on the first page of this issue brief, the bicameral, coalition-backed BCBJ Act provides a blueprint for the federal government to lead in helping states deliver quality HCBS under a consumer self-directed model. States that establish or strengthen consumer-directed care models would receive an additional two percentage point federal Medicaid match by registering qualified direct care workers and connecting beneficiaries with providers, recruiting independent providers and training them and consumers on self-directed care models, ensuring safety and quality care through measures like background checks, and supporting independent living principles of care coordination and allowing beneficiaries to hire a caregiver who is a family member or someone with whom they have an existing relationship. The legislation lays out a strong federal support structure for states to establish stronger HCBS programs while also requiring states that take up enhanced federal funds to ensure program policies and procedures remain neutral to organizing and allow for cooperation with existing labor organizations where applicable.

**KEY TAKEAWAY: The BCBJ Act’s proposed tie between enhanced Medicaid funding to the collective organizing and quality care strategies that stabilize the workforce is innovative and unprecedented in a system that has consistently disenfranchised caregivers from basic labor rights.**

## RECOMMENDATIONS FOR IMMEDIATE CONGRESSIONAL ACTION

- 1. Pass the \$400 billion investment in HCBS outlined in the Build Back Better plan via budget reconciliation.**  
In order to ensure that funding for expanding access to HCBS and strengthening the workforce is sufficient, Congress should fund the full \$400 billion investment amount as indicated by the Biden Administration as a down-payment on full, permanent care infrastructure expansion.
- 2. Ensure that the policy scaffolding outlined in the Better Care Better Jobs Act (BCBJ) is incorporated into any Congressional funding package.**  
In order to maintain fidelity to the Biden Administration's intent to create career pathways and good, union, family-sustaining jobs for America's majority women-of-color caregiving workforce, care infrastructure investment funding must be included and earmarked for the care quality and workforce strengthening provisions outlined in the BCBJ blueprint.
- 3. Create federal pathways for workers to benefit from high-road training partnerships.**  
From 2019 to 2029, the direct care workforce is projected to add nearly 1 million new home care jobs and simultaneously need to fill almost 3.5 million job openings as workers leave the field. Investing in direct care worker recruitment, retention, and advancement will help fill these ~4.5 million total job openings. Labor/management training funds have successfully started training programs where no viable pathway existed using comprehensive high-road training strategies like integrating home care workers into the care team, raising wage and benefit floors, and building career ladders for advancement within the field and to other occupations in healthcare. Including pathways to stimulate and support labor/management partnerships in the federal care infrastructure investment will be essential to reducing turnover, increasing worker and consumer satisfaction, and decreasing occupational segregation by increasing job quality, especially in more conservative states where unions have less of a base.
- 4. Ensure provisions to strengthen the ability of home care workers to organize are funded sustainably.**  
The enhanced federal matching provisions included in the BCBJ Act for states to create and strengthen consumer-directed care programs are funded in that legislation for only one year. It will likely take the Center for Medicaid and Medicare Services (CMS) and state Medicaid agencies longer than such a short period to effectively build the state delivery systems required for HCBS programs that effectively allow workers to organize and for consumers to truly self-direct their care, especially in states where no such model exists in any manner and Medicaid rebalancing efforts away from institutionalization are behind. Extending the federal matching funds until the new consumer-directed care delivery programs are built with suitable levels of stakeholder input (including from workers and the labor organizations they seek to join) is more appropriate and realistic in order to substantially impact care and job quality.

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<sup>i</sup>Boris, E., & Nadasen, P. (2008). DOMESTIC WORKERS ORGANIZE! *WorkingUSA*, 11(4), 413–437. <https://doi.org/10.1111/j.1743-4580.2008.00217.x>

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<https://www.brookings.edu/blog/the-avenue/2020/12/02/the-health-care-workforce-needs-higher-wages-and-better-opportunities/>

<sup>ii</sup>Lezzoni, L. I., Gallopyn, N., & Scales, K. (2019). Historical Mismatch Between Home-Based Care Policies and Laws Governing Home Care Workers.

*Health Affairs*, 38(6), 973–980. <https://doi.org/10.1377/hlthaff.2018.05494>

<sup>iii</sup>Eisenbrey, R. (2014). *Harris v. Quinn* Is About the Right of Home Care Workers to Improve Their Wages. Economic Policy Institute.

<https://www.epi.org/blog/harris-quinn-home-care-workers-improve-wages/>

<sup>iv</sup>Lieberman, A., Loewenberg, A., Love, I., Robertson, C., & Tesfai, L. (2021, June 28). *Valuing home and Child Care Workers: Policies and Strategies that Support Organizing, Empowerment, and Prosperity*. New America. <https://www.newamerica.org/new-practice-lab/reports/valuing-home-child-care-workers/policy-a-roadblock-and-pathway-to-securing-care-worker-rights>.

<sup>v</sup>Ibid.

<sup>vi</sup>Ibid.

<sup>vii</sup>Christman, A., & Connolly, C. (2017). Surveying the Home Care Workforce: Their Challenges & The Positive Impact of Unionization. The National Employment Law Project (NELP). <https://s27147.pcdn.co/wp-content/uploads/surveying-home-care-workforce.pdf>

<sup>viii</sup>Ibid.

<sup>ix</sup>Author's analysis of KFF Medicaid HCBS Program Surveys, FY 2018 data. Data indicate that 643,479 of the 819,889 total U.S. residents on Medicaid HCBS waiting lists in FY 2018 lived in one of 27 states with right-to-work laws. (Raw data accessed at: <https://www.kff.org/health-reform/state-indicator/waiting-lists-for-hcbs-waivers>).

<sup>x</sup>Campbell, S. (2021). Will COVID-19 Change Direct Care Employment? New Data Offer Clues. PHI Newsroom. <https://phinational.org/will-covid-19-change-direct-care-employment-new-data-offer-clues/>

<sup>xi</sup>PHI. (2021). The Direct CARE Opportunity Act. <http://phinational.org/resource/the-direct-care-opportunity-act/>