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## How Remote Support Technology Can Alleviate the Caregiver Shortage

Thomas Tarver

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# HOW REMOTE SUPPORT TECHNOLOGY CAN ALLEVIATE THE CAREGIVER SHORTAGE CRISIS

By: Thomas Tarver\*

## ABSTRACT

Since the COVID-19 pandemic, nearly every sector of the economy has struggled with workforce shortages, and one of the most severely impacted industries is the long-term care services industry. Indeed, this industry has historically been unable to attract and retain enough caregivers to meet the needs of its clients and the pandemic only exacerbated this problem. Those who rely on long-term care services are typically members of some of society's most vulnerable populations such as frail elders and individuals with disabilities. Not having enough caregivers adversely affects these populations as care staff shortages are more likely to lead to abuse and neglect.

This comment suggests that national reforms are needed to address the caregiver shortage. First, this comment discusses the relevant historical and legal background leading to the caregiver shortage. Next, this comment describes the extent of the caregiver shortage and how it is detrimental to those relying on long-term care services. Lastly, this comment argues that remote support technology can help alleviate the caregiver shortage and that the federal government should reform the Medicaid Act to promote the spread of this technology.

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## INTRODUCTION

In recent years, seemingly every sector of the economy has struggled to find enough workers. Perhaps the most adversely affected industry by the labor shortage has been the long-term care services industry.<sup>1</sup> This line of work serves some of society's most vulnerable populations such as the elderly and people with disabilities.<sup>2</sup> Labor shortages in this industry have dire consequences as elderly and disabled clients' basic needs struggle to be met when facilities are understaffed.<sup>3</sup> This can result in abuse, neglect, and wrongful death for the elderly and people with disabilities relying on long-term care services.

This Comment argues that national reforms are needed to alleviate the caregiver shortage. Part I of this Comment provides the historical and legal background leading to the caregiver shortage. Part II outlines the extent of the caregiver shortage, how it adversely affects individuals needing long-term care services, and the reasons why there is a caregiver shortage. Lastly, Part III argues that reforms to the Home and Community-Based Services waiver system are needed to help promote the use of remote support technology as this technology can reduce the reliance on caregivers.

### I. THE STORY OF WILLOWBROOK, POST-WILLOWBROOK REFORMS, AND THE GROWING NEED FOR CAREGIVERS

#### A. Institutional Care and the Willowbrook State School

Prior to the early 1980s, individuals with disabilities needing long-term care were typically placed in institutional settings.<sup>4</sup> Starting in the 1960s, national conversations began to develop concerning the inhumane conditions residents of state-run

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<sup>1</sup> ICYMI: *New Report from ASPE Confirms Disproportionate Workforce Shortage Among Long Term Care Facilities*, AHCA NCAL (May 12, 2022), <https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/ICYMI-New-Report-from-ASPE-Confirms-Disproportionate-Workforce-Shortage-Among-Long-Term-Care-Facilities.aspx> [<https://perma.cc/6KSL-EYUR>].

<sup>2</sup> *Long-Term Care and Support*, WISCONSIN DEPARTMENT OF HEALTH SERVICES (Jan. 25, 2023), <https://www.dhs.wisconsin.gov/long-term-care-support.htm> [<https://perma.cc/T4SN-B3E8>].

<sup>3</sup> See Robert Pear, *9 of 10 Nursing Homes in U.S. Lack Adequate Staff, a Government Study Finds*, N.Y. TIMES (Feb. 18, 2002), <https://www.nytimes.com/2002/02/18/us/9-of-10-nursing-homes-in-us-lack-adequate-staff-a-government-study-finds.html>.

<sup>4</sup> CYNTHIA SHIRK, REBALANCING LONG-TERM CARE: THE ROLE OF THE MEDICAID HCBS WAIVER PROGRAM 4 (2006).

institutions were subjected to.<sup>5</sup> Perhaps the most prominent example of a state institution serving individuals with disabilities during this era was the Willowbrook State School in Staten Island, New York.<sup>6</sup> Willowbrook was first thrust into the national spotlight in 1965 when Robert Kennedy visited the facility and remarked that the residents “lived in filth,” “suffered tremendously,” and that the situation at Willowbrook “borders on a snakepit.”<sup>7</sup> After Kennedy’s disparaging comments, the State of New York attempted to improve the facility but failed to alleviate the inhumane conditions.<sup>8</sup> For example, in 1969, 6,200 residents resided at Willowbrook despite the facility having a capacity of 4,000.<sup>9</sup> Willowbrook’s overcrowding fostered widespread hepatitis outbreaks within the institution, resulting in medical researchers taking advantage of the situation and intentionally exposing residents to hepatitis to test the effectiveness of various vaccines.<sup>10</sup>

In 1972, Willowbrook was once again thrust into the national spotlight when ABC News investigative reporter Geraldo Rivera exposed Willowbrook’s overcrowding, inhumane practices, and general abuse and neglect of its residents.<sup>11</sup> Shortly after Rivera’s exposé, the parents of Willowbrook’s residents filed a class action lawsuit alleging the facility violated the residents’ constitutional right to treatment and sought to improve Willowbrook’s conditions.<sup>12</sup> The court found that the residents did not have a constitutional right to treatment, but did find that the residents had a right to reasonable protection from harm, and granted some of the plaintiffs’ requests to improve Willowbrook’s conditions.<sup>13</sup>

## B. Post-Willowbrook Reforms and Legal Developments

After it was settled, the Willowbrook case likely had lasting political effects as the federal government took initiatives to provide long-term care services in community-based settings. Specifically, Congress enacted reforms to the Medicaid Act that allowed non-institutional-based services to be covered under the program; Section 2176 of the Omnibus Budget Reconciliation Act of 1981 established the Home and Community-Based Services (HCBS)

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<sup>5</sup> *The Closing of Willowbrook*, DISABILITY JUSTICE (last visited Jan. 12, 2024), <https://disabilityjustice.org/the-closing-of-willowbrook/> [<https://perma.cc/6E7Y-M48S>].

<sup>6</sup> *Id.*

<sup>7</sup> *Willowbrook: The Last Great Disgrace* (WABC-TV Channel 7 New York television broadcast Feb. 2, 1972).

<sup>8</sup> THE CLOSING OF WILLOWBROOK, *supra* note 5.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*; see generally *Willowbrook: The Last Great Disgrace*, *supra* note 7.

<sup>12</sup> *New York State Ass’n for Retarded Child., Inc. v. Rockefeller*, 357 F. Supp. 752, 757-758 (E.D.N.Y. 1973).

<sup>13</sup> *Id.* at 758.

waiver program.<sup>14</sup> Prior to this legislation, long-term care services were available only in institutional settings.<sup>15</sup> The HCBS waiver program allows state Medicaid plans to provide long-term care services in community-based settings as an alternative to institutionalizing an individual with a disability.<sup>16</sup>

The HCBS waiver program was the initial step in “recognizing that many individuals at risk of institutionalization can be supported in their homes and communities, thereby preserving their independence and bonds to family and friends, at a cost not higher than institutional care.”<sup>17</sup> Similarly, most HCBS beneficiaries strongly prefer community-based settings, rather than institutional settings, due to the desire to live in their home, participate in their community, and have greater control over their daily decisions.<sup>18</sup> However, there are many challenges when it comes to meeting the goals of HCBS waivers.<sup>19</sup> Common issues with HCBS waivers are access to providers and caregivers, caregiver burnout, lack of 24/7 medical professionals available, and limited caregiver availability in rural areas.<sup>20</sup> Despite the challenges associated with it, the law has continued to move in the direction of expanding and promoting the goals of the HCBS system.

For example, the Supreme Court of the United States further bolstered the commitment to ensuring individuals with a disability requiring long-term care services can receive community-based services in *Olmstead v. L.C. Zimring*.<sup>21</sup> There, the court held that a state unlawfully violates the Americans with Disabilities Act’s antidiscrimination provisions when it refuses to transfer an institutionalized individual into a community-based setting when community placement is appropriate, can be reasonably accommodated, and the resources for such placement are available.<sup>22</sup> In sum, since the Willowbrook scandal, the United States has prioritized community-based settings for those needing long-term care.

### C. The Growing Demand for Caregivers

The commitment to prioritizing community-based settings has coincided with a skyrocketing growth in the number of care workers

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<sup>14</sup> Mary Jean Duckett & Mary R. Guy, *Home and Community-Based Services Waivers*, HEALTH CARE FINANCING REVIEW, 123, 123 (2000).

<sup>15</sup> SHIRK, *supra* note 4, at 4.

<sup>16</sup> Duckett & Guy, *supra* note 14, at 123.

<sup>17</sup> *Id.*

<sup>18</sup> SHIRK, *supra* note 4, at 4.

<sup>19</sup> *Id.* at 20.

<sup>20</sup> *Home- and Community-Based Services*, CMS.GOV (last visited Jan. 12, 2024) <https://www.cms.gov/outreach-and-education/american-indian-alaska-native/aian/lts-ta-center/info/hcbs> [https://perma.cc/QZ9J-MNBF].

<sup>21</sup> See generally *Olmstead v. L.C., Zimring*, 527 U.S. 581 (1999).

<sup>22</sup> *Olmstead*, 527 U.S. 581 at 607.

employed in the United States. In 2002, three years after the Supreme Court recognized the right to live in a community-based setting in *Olmstead*, approximately 539,700 home care workers were employed in the United States.<sup>23</sup> Six years later, the number of home care workers in the United States grew to 898,600, and in 2018, there were 2.3 million home care workers.<sup>24</sup> Even with this massive growth in-home care workers, roughly three out of four respondents to a survey of home care providers cited caregiver shortages as one of their most pressing concerns.<sup>25</sup> Likewise, the need for caregivers seems to only have gotten greater since the COVID-19 pandemic as the home care workforce is expected to add over one million new jobs by 2028.<sup>26</sup> As Part II will show, the growing demand and shortage of caregivers adversely impacts those relying on long-term care and threatens the goals of the HCBS system.

## II. THE EXTENT OF THE CAREGIVER SHORTAGE, HOW IT ADVERSELY AFFECTS INDIVIDUALS WHO NEED LONG-TERM CARE SERVICES, AND THE REASONS WHY THERE IS A CAREGIVER SHORTAGE

The HCBS system and *Olmstead* have been viewed as victories for the people with disabilities community.<sup>27</sup> However, the need for more caregivers after these events has resulted in several problems. First, the high demand for caregivers has resulted in a massive shortage of caregivers. This caregiver shortage has been further exacerbated by the Covid-19 pandemic. The caregiver shortage causes serious problems for people relying on long-term care services to get the care they need, leading to increased instances of abuse, neglect, and wrongful death.

### A. Extent of the Caregiver Shortage

Some disability and elder advocacy groups have described the current need for care workers as a “Long-Term Care Workforce

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<sup>23</sup> Kezia Scales, *Meeting the Integration Mandate: The Implication of Olmstead for the Home Care Workforce*, 27 GEORGETOWN J. ON POVERTY L. AND POL’Y 261, 273 (2020).

<sup>24</sup> *Id.*

<sup>25</sup> Carlo Calma, *How Home Care Companies Can Get Caregivers to ‘Stay,’* HOME HEALTH CARE NEWS (July 26, 2017), <https://homehealthcarenews.com/2017/07/how-home-care-companies-can-get-caregivers-to-stay/> [<https://perma.cc/N2UW-MY5X>].

<sup>26</sup> Scales, *supra* note 23.

<sup>27</sup> See SHIRK *supra* note 4, at 4 (the HCBS system allows people to live in their own homes, participate in their community, and have more control over their daily life); Laurie M. Flynn, *Supreme Court Gives Incremental Victory to Persons with Mental Illness in Olmstead Decision*, NAMI (June 22, 1999), <https://www.nami.org/Press-Media/Press-Releases/1999/Supreme-Court-Gives-Incremental-Victory-to-Persons>. [<https://perma.cc/2ULK-HKH6>].

Crisis.”<sup>28</sup> A 2020 study on the caregiver workforce in Wisconsin found that there are 23,165 open caregiving positions, but only 19,600 people in the state are unemployed and want a job.<sup>29</sup> Further, 18,482 Wisconsinites sought services from a long-term care provider but were denied or delayed due to a lack of available care workers.<sup>30</sup>

The caregiver shortage crisis has not only affected Wisconsin but has had a large impact on the long-term care industry nationally. The American Health Care Association (AHCA) released a survey of 759 long-term care providers regarding staffing shortages in June of 2022.<sup>31</sup> The survey found that 60 percent of providers reported that their staffing situation has worsened since January of 2022, and 87 percent of providers are currently facing moderate to high staffing shortages, including 48 percent of providers reporting that they are facing a high level of staffing shortages.<sup>32</sup> Almost all providers (98 percent) report experiencing difficulty in hiring care staff and 99 percent of providers report asking their caregivers to work overtime or additional shifts.<sup>33</sup> Over 70 percent of providers report having to hire temporary help agency staff despite roughly 90 percent of providers offering increased wages and bonuses to new caregivers.<sup>34</sup>

The struggle to stabilize the long-term care workforce has resulted in providers having to cut back on services and new clients.<sup>35</sup> The survey found that 61 percent of providers are limiting new clients as a result of staffing shortages and 73 percent are concerned about having to close their facility because of staffing issues.<sup>36</sup> Beth Martino, the Senior Vice President of Public Affairs for AHCA, projects that over 400 nursing homes could close in 2022 due to the caregiver workforce crisis.<sup>37</sup> Long-term care providers being forced to close due to staffing shortages will likely leave the elderly

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<sup>28</sup> 2022 *Long-Term Care Workforce Report Released: Workforce Shortage Crisis Worsens*, WHCA/WiCAL (last visited Jan. 12, 2024), [https://www.whcawical.org/publications/care-connection/august-4-2022/2022-long-term-care-workforce-report-released-workforce-shortage-crisis-worsens/#:~:text=The%20Long%2DTerm%20Care%20Workforce,term%20care%20\(LTC\)%20providers](https://www.whcawical.org/publications/care-connection/august-4-2022/2022-long-term-care-workforce-report-released-workforce-shortage-crisis-worsens/#:~:text=The%20Long%2DTerm%20Care%20Workforce,term%20care%20(LTC)%20providers) [<https://perma.cc/3NAB-BRB2>].

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Survey: Nursing Homes Still Facing Staffing & Economic Crisis*, AHCA NCAL (June 6, 2022), <https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/Survey-Nursing-Homes-Still-Facing-Staffing-&-Economic-Crisis.aspx> [<https://perma.cc/WH88-8LH9>].

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Dennis Thompson, *Staffing Shortages Have U.S. Nursing Home in Crisis*, U.S. NEWS & WORLD REPORT (June 29, 2022), <https://www.usnews.com/news/health-news/articles/2022-06-29/staffing-shortages-have-u-s-nursing-homes-in-crisis> [<https://perma.cc/N7NF-NV5B>].



and others needing long-term care services struggling to get the care they need.<sup>38</sup>

## **B. How Staffing Shortages Adversely Impact Individuals Who Need Long-Term Care Services**

Having adequately staffed long-term care facilities is vital for the elderly and people with disabilities as understaffed facilities result in more instances of abuse, neglect, and death. For example, a report from the Department of Health and Human Services found that residents in understaffed long-term care facilities were more likely to experience malnutrition, weight loss, dehydration, bedsores, pneumonia, and serious blood-borne infections.<sup>39</sup> Additionally, understaffed long-term care facilities are seemingly more likely to violate the statutory rights held by residents of long-term care facilities. In Wisconsin, residents of long-term care facilities are afforded rights to prompt and adequate treatment,<sup>40</sup> freedom from seclusion,<sup>41</sup> and the right to live in a safe environment.<sup>42</sup> Further, long-term care providers are required to provide employees in sufficient numbers on a 24-hour basis to meet their resident's needs.<sup>43</sup> Failing to adequately staff a facility can also result in the provider violating their statutory duty to not allow conditions that represent risks or harm to the health, safety, or welfare of the residents.<sup>44</sup> The caregiver shortage crisis prevents long-term care providers from fulfilling their legal duty to sufficiently staff their facilities which can adversely affect their clients.

In Wisconsin, the Department of Health Services allows consumers to research all licensed long-term care providers in the state, which includes survey history of administrative code violations.<sup>45</sup> When reviewing long-term care providers survey history, many of the resident rights violations of Wisconsin administrative code result from care staff shortages. For example, at a facility in Waupaca County, two of the facility's residents'

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<sup>38</sup> *Id.*

<sup>39</sup> Pear, *supra* note 3.

<sup>40</sup> Wis. Stat. § 51.61(f) (2017).

<sup>41</sup> Wis. Admin. Code Ch. DHS § 83.32(e) (2009); Wis. Admin. Code Ch. DHS § 88.10(n) (2021).

<sup>42</sup> Wis. Admin. Code Ch. DHS § 83.32(n) (2009); Wis. Admin. Code Ch. DHS § 88.10(L) (2021).

<sup>43</sup> Wis. Admin. Code. Ch. DHS 83.36(1) (2009).

<sup>44</sup> Wis. Admin. Code. Ch. DHS 88.04(2)(f) (2008); Wis. Admin. Code. Ch. DHS 83.14(2)(j) (2009).

<sup>45</sup> *Consumer Guide: Provider Search*, WISCONSIN DEPARTMENT OF HEALTH SERVICES (last visited Jan. 12, 2024), <https://www.dhs.wisconsin.gov/guide/provider-search.htm> [<https://perma.cc/R6M2-QMTR>].

diagnoses include quadriplegia and hemiplegia.<sup>46</sup> Both residents' individual service plans require that two care staff members be present in order to safely transfer the residents out of their beds.<sup>47</sup> However, this facility only staffed one caregiver each day and the two residents could not be safely transferred out of bed.<sup>48</sup> When the Department of Health Services surveyor visited the facility, both residents were lying in bed, and one resident reported that they had not been transferred out of bed for over a week.<sup>49</sup> Additionally, both residents have missed scheduled showers and medical appointments because the facility did not have two caregivers to transfer the residents out of their beds.<sup>50</sup> In this example, merely having one less caregiver has prevented the two residents from participating in their community as they are continuously bedridden. Understaffing also has the potential to jeopardize the residents' health as they have missed medical appointments and showers due to a lack of staff.

A facility lacking adequate staff numbers to meet its residents' needs can also result in severe instances of abuse, neglect, and death. For example, a four-resident facility in Racine County had a resident with borderline intellectual functioning and schizoaffective disorder who needed one-to-one staffing.<sup>51</sup> This means that the resident must always have "staff should be within arm's reach . . . at all times in the home" in order to keep the resident safe.<sup>52</sup> Because this facility had four residents, including the resident who required one-to-one staffing, the facility needed to have at least two caregivers present at all times.<sup>53</sup> However, this facility was facing staffing shortages and only had one caregiver working on at least four occasions in March of 2021.<sup>54</sup> On one of those occasions, the sole caregiver briefly left the resident unattended to clean the facility's bathroom.<sup>55</sup> While unattended to, the resident fell off the couch, broke part of their spine, and died several days later in the hospital.<sup>56</sup> The surveyor asked the caregiver who was on duty why they were not within

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<sup>46</sup> *Statement of Deficiencies and Plan of Correction McKinley House*, DEPARTMENT OF HEALTH SERVICES (Sept. 14, 2022) <https://www.forwardhealth.wi.gov/kw/dqa/LJMQ12SODS.PDF> [<https://perma.cc/6S4Q-ZR48>].

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Statement of Deficiencies and Plan of Correction McKinley House*, *supra* note 46.

<sup>51</sup> *Statement of Deficiencies and Plan of Correction Open Arms Assisted Living Hawthorne*, WISCONSIN DEPARTMENT OF HEALTH SERVICES (June 30, 2022) <https://www.forwardhealth.wi.gov/kw/dqa/NXVL11SODS.PDF> [<https://perma.cc/N84Y-NRAJ>].

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Statement of Deficiencies and Plan of Correction Open Arms Assisted Living Hawthorne*, *supra* note 51.

arm's reach of the resident, and the caregiver responded that they had other duties to perform outside of continuously monitoring the resident.<sup>57</sup>

The above two examples show how vital care staff is to individuals who utilize long-term care services, and how it can violate resident rights to be free from seclusion and the right to live in a safe environment. Lack of staffing can isolate residents from their community, as the Waupaca County facility example shows. This is particularly unfortunate considering that one of the main benefits of the HCBS waiver system is to integrate people with disabilities into their communities.<sup>58</sup> Additionally, the Racine County example shows how dangerous lacking staff can be to residents.

### C. Why The Caregiver Shortage Exists

As the above examples show, the need for caregivers in long-term care facilities is surely a crisis, but how did it get so bad? Seemingly every industry has been suffering from a labor shortage over the past couple of years. As of January of 2024, 8.8 million jobs are available in the United States while only 6.3 million workers are unemployed, meaning that if every unemployed worker found work, there would still be over 2 million open positions available.<sup>59</sup> Based on the labor shortage nationally, one could infer that it is no wonder that the long-term care industry has also been affected by the current labor shortage. However, the health services sector consistently exhibits the most job openings.<sup>60</sup> Again, one could infer that because the health services sector has been disproportionately affected by the labor shortage it is no wonder that the long-term care industry is also struggling for work. However, the long-term care industry has been hit even harder by the labor shortage than the healthcare industry in general. Between December 2020 and December 2021, hospitals lost 32,900 employees, while the long-term care industry has lost more than 145,000 caregivers.<sup>61</sup>

While the current labor shortage has surely hit this industry hard, staffing shortages in long-term care facilities have been an

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<sup>57</sup> *Id.*

<sup>58</sup> See SHIRK, *supra* note 4, at 4 (Most beneficiaries prefer the HCBS system to institutional care because it better enables them to participate in their community).

<sup>59</sup> Stephanie Ferguson & Isabella Lucy, *America Works Data Center*, U.S. CHAMBER OF COMMERCE (Jan. 09, 2024) <https://www.uschamber.com/workforce/america-works-data-center> [<https://perma.cc/FS68-3F9U>].

<sup>60</sup> Stephanie Ferguson, *Understanding America's Labor Shortage: The Most Impacted Industries*, U.S. CHAMBER OF COMMERCE (Jan. 09, 2024), <https://www.uschamber.com/workforce/understanding-americas-labor-shortage-the-most-impacted-industries> [<https://perma.cc/5WZT-NVUU>].

<sup>61</sup> ICYMI: *New Report from ASPE Confirms Disproportionate Workforce Shortage Among Long Term Care Facilities*, *supra* note 1.

issue for decades.<sup>62</sup> A 2002 study from the Department of Health and Human Services concluded that more than 90 percent of nursing homes in the United States had too few workers to properly care for their residents.<sup>63</sup> Because there have been shortages of long-term care workers for so long, the nature of long-term care work is likely a substantial influence as to why the long-term care industry is struggling to find workers.

Specifically, low wages, lack of respect, and the stressful nature of caregiving are catalysts exacerbating the long-term care worker shortage.<sup>64</sup> A 2022 survey of Certified Nursing Assistants (CNAs) illustrates the undesirability of the profession.<sup>65</sup> The most common reason for CNAs leaving their job was low wages with over 80 percent of respondents reporting that it would take better benefits and wages in order to be hired back by their former long-term care employer.<sup>66</sup> The second most common reason for leaving long-term care work was burnout, while lack of respect was third.<sup>67</sup> The survey also highlights the stressful nature of the job as 35 percent of respondents report having to care for 15 to 20 patients/residents per shift.<sup>68</sup> Additionally, 33 percent of respondents who work the overnight shift reported caring for more than 25 patients/residents.<sup>69</sup> Similarly, when asked what the most pressing challenge the respondents face while working, more than half of respondents cited staffing shortages, the most common answer.<sup>70</sup> These data suggest that the long-term care worker shortage, in and of itself, is a catalyst that leads more caregivers to leave this industry.

The current undesirability of long-term care work will seemingly only get worse as, according to the Bureau of Labor Statistics, home health and personal care aides are projected to grow by 33 percent, making it the fastest-growing occupation.<sup>71</sup> This projection is likely

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<sup>62</sup> See Pear, *supra* note 3.

<sup>63</sup> *Id.*

<sup>64</sup> See *Survey: CNAs Cite Low Wages, Burnout, Lack of Respect as Key Contributors to Staffing Crisis*, NAHCA (Mar. 4, 2022), <http://web.archive.org/web/20220307114905/https://www.nahcacna.org/cnas-cite-low-wages-burnout-lack-of-respect-as-key-contributors-to-staffing-crisis/> [<https://perma.cc/FTC2-GT3L>].

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Alexander Moe, *The Crisis Facing Nursing Homes, Assisted Living and Home Care for America's Elderly*, POLITICO (July 28, 2022, 4:30 AM), <https://www.politico.com/news/magazine/2022/07/28/elder-care-worker-shortage-immigration-crisis-00047454>.

tied to the fact that the 2020 U.S. Census showed that the fastest-growing population is the nation's 65 and older population.<sup>72</sup>

In sum, the caregiver shortage is a major problem facing people with disabilities and the elderly who rely on long-term care services, leading to instances of abuse, neglect, and wrongful death. Caregiver shortages have persisted for decades, and the shortage has gotten worse since the COVID-19 pandemic and the subsequent labor shortage. Additionally, the shortage appears to be exacerbated by the undesirability of the caregiver profession as wages are low, burnout is high, and staffing shortages themselves lead to added stress for caregivers. Further adding to the crisis is that the U.S. 65-and-older population is growing and the need for home and personal care workers is expected to be the fastest growing occupation. Serious reforms are needed to alleviate the current caregiver shortage, as well as prepare for the expected skyrocketing need for long-term care workers.

### III. REMOTE SUPPORT TECHNOLOGY CAN ALLEVIATE THE CAREGIVER SHORTAGE

With the current shortage of caregivers and the expectation that the demand for caregivers will grow at an alarming rate, reforms are needed so that individuals relying on long-term care can get the services they need. As described above, the long-term caregiver profession is undesirable considering the stress of the job, low pay, and long hours. Some have suggested that by making the caregiving profession more desirable through higher pay and better benefits, this will attract and retain more workers to the caregiver profession and help alleviate the crisis.<sup>73</sup> While making the caregiver profession more desirable will presumably help attract workers to the caregiving profession, it is likely not enough considering the extent of the current shortage and the expected future need for more caregivers. One solution to help reduce the caregiver shortage is to use remote support technology to replace traditional in-home caregivers.

#### A. Remote Support Technology and its Benefits

Remote support technology is an emerging form of support for individuals who rely on long-term care services, typically

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<sup>72</sup> U.S. Census Bureau Releases 2019 Population Estimates by Demographic Characteristics, UNITED STATES CENSUS BUREAU (June 25, 2020), <https://www.census.gov/newsroom/press-releases/2020/65-older-population-grows.html#:~:text=U.S.%20Census%20Bureau%20Releases%202019,born%20between%201946%20and%201964> [https://perma.cc/C2FS-W6M3].

<sup>73</sup> *What to Know About the In-Home Caregiver Shortage*, UDS FOUNDATION (December 29, 2021), <https://udservices.org/caregiver-shortage/> [https://perma.cc/E5EH-9W7T].

individuals with developmental disabilities.<sup>74</sup> In its simplest form, remote support technology is a tool that allows a person utilizing long-term care services to communicate when that person is in danger or needs some form of support.<sup>75</sup> In practice, this often consists of sensors and communication devices in a person's home, or facility in which they reside, that produce an alert that can be responded to by someone such as a neighbor or family member, a care staff member who is nearby, or a remote call center.<sup>76</sup> The communication devices are usually integrated through a central hub, and individual service plans regarding the use of such sensors and devices are typically developed ahead of time to define the parameters of the technology's usage.<sup>77</sup> As the individual continues to use the remote support technology, it will be continuously evaluated, modified, and possibly faded out over time.<sup>78</sup> Typical devices used in an individual's home are motion detectors, door and window sensors, smoke and carbon monoxide sensors that can be monitored remotely, bed and chair sensors, and fall sensors.<sup>79</sup>

While having the benefit of replacing in-person caregivers, remote technology also furthers many of the goals of the *Olmstead* case and HCBS system outlined in Part I of this Comment. Specifically, some argue that remote support technology enables individuals with disabilities to further assimilate into the community by providing more independence, while not sacrificing safety and security.<sup>80</sup> Independence is maximized through remote support by allowing an individual to live more hours physically alone while still receiving the support without having care staff in their home 24 hours a day, 7 days a week, 365 days a year.<sup>81</sup>

Along with more independence, individuals utilizing remote support technology obtain more physical privacy. In Wisconsin, residents in long-term care facilities have the right to have physical and emotional privacy in their treatment.<sup>82</sup> However, it is difficult for an individual in a long-term care setting to effectuate this right when care staff is always in their home. A survey was conducted in Ohio for individuals who use remote support services instead of direct-care staff, and 45 of 51 individuals reported that they either

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<sup>74</sup> Jordan B. Wagner et al., *Implementation of Remote Support Services: Pre-COVID-19*, 19, Issue 4 J. OF POL'Y AND PRAC. IN INTELL. DISABILITIES 340, 341-342 (2022).

<sup>75</sup> Michael Clausen, *Remote Supports for People with Disabilities*, THE COUNCIL ON QUALITY AND LEADERSHIP (June 23, 2020), <https://www.c-q-l.org/resources/newsletters/remote-supports-for-people-with-disabilities/> [<https://perma.cc/7WX9-7DHW>].

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Clausen, *supra* note 75.

<sup>80</sup> *Id.*

<sup>81</sup> *See Id.*

<sup>82</sup> WIS. ADMIN. CODE DHS § 88.10 (2021).

felt “some privacy” or “lots of privacy” in their homes.<sup>83</sup> Additionally, individuals who use remote monitoring systems report experiencing benefits such as increased socialization, better medical monitoring, reduced caregiver error, and improved daily living skills.<sup>84</sup> In sum, remote technology can further assimilate individuals with disabilities into their communities by providing individuals with more independence, privacy, and in turn, a more dignified lifestyle.

## B. How Remote Support Technology Reduces the Need for Caregivers

Along with the benefits that remote support technology provides to people with disabilities, remote support technology should reduce the reliance on in-home caregivers. Many individuals utilize overnight caregivers to support them in “just in case” situations.<sup>85</sup> However, for many individuals with a disability, remote support monitoring can be just as effective for “just in case” situations, especially for individuals with mild intellectual disabilities.<sup>86</sup> Reducing the need for overnight caregivers for individuals who only need them for emergency situations could better maximize the caregiver workforce by freeing up caregivers to assist individuals who need more support overnight.

Further, by reducing the overnight caregiver workforce, these caregivers can be used during morning and afternoon shifts instead. Additionally, many individuals with disabilities live in community-based residential facilities and residential care apartment complexes where at least five other residents reside.<sup>87</sup> Remote support technology could be used to monitor residents with fewer needs, while the residents with more needs will still have direct caregiver support. Additionally, this should provide more needy residents with better care as less caregiver attention will be given to the higher-functioning residents. While remote support technology alone will not completely eliminate the caregiver shortage, it can reduce the

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<sup>83</sup> Marc J. Tasse, et al., *Using Technology and Remote Support Services to Promote Independent Living of Adults with Intellectual Disability and Related Developmental Disabilities*, J. OF APPLIED RSCH. IN INTELL. DISABILITIES 640, 644 (2020).

<sup>84</sup> UCP’s *New Remote Support Tech Program Helps People with Disabilities Access Independent Living, While Addressing Caregiver Shortages in Massachusetts*, THE BERKSHIRE EAGLE (Jan. 29, 2022), [https://www.berkshireeagle.com/sponsored/ucp-s-new-remote-support-tech-program-helps-people-with-disabilities-access-independent-living-while/article\\_661c063a-7eda-11ec-8d7f-df53d1e89898.html](https://www.berkshireeagle.com/sponsored/ucp-s-new-remote-support-tech-program-helps-people-with-disabilities-access-independent-living-while/article_661c063a-7eda-11ec-8d7f-df53d1e89898.html) [https://perma.cc/KU8F-UXDA].

<sup>85</sup> *How are Remote Monitoring Supports Provided*, REST ASSURED <https://restassured.com/people-with-disabilities/how-it-works/> [https://perma.cc/7XJQ-GA97] (last visited January 12, 2024).

<sup>86</sup> *See Id.*

<sup>87</sup> *Community-Based Residential Facility*, WIS. DEPT OF HEALTH SERVICES, <https://www.dhs.wisconsin.gov/regulations/cbrf/introduction.htm> [https://perma.cc/E6UZ-S8GF] (last visited January 12, 2024).

reliance on caregivers, and the caregiver supply can be better allocated toward individuals whose needs do not allow for remote support monitoring.

In sum, remote support technology offers many positives for the state of long-term care services in the United States. For individuals with disabilities, remote support technology furthers the goals of the HCBS waiver system and *Olmstead* by helping persons with disabilities further assimilate into their communities through greater independence, privacy, and improved daily living skills. For long-term care providers, remote support technology reduces the need for caregivers and allows limited care staff resources to be more efficiently allocated.

### C. Remote Support Technology Usage in the United States

Despite the many benefits remote support technology offers, remote support services are not utilized in most states in the United States.<sup>88</sup> As discussed in Part II, the HCBS waiver system is a Medicaid program that allows people to receive long-term care services in their home or community, rather than in an institutional setting.<sup>89</sup> Virtually every state offers services through HCBS waivers, and each state can operate as many waivers as it sees fit.<sup>90</sup> Each state waiver must only demonstrate that waiver services will not cost more than services in an institution, ensure the health and welfare of the person using the waiver, provide sufficient and reasonable provider standards to meet the needs of the target population, and ensure that the services will follow a person-centered, individualized care plan.<sup>91</sup>

However, despite the wide discretion to experiment with community-based services coupled with the caregiver shortage crisis, only 18 states report offering some form of remote support services for people with disabilities through their HCBS waiver program.<sup>92</sup> The slow spread of remote support services being offered in other states' HCBS waivers is likely due to perceived issues with the service.<sup>93</sup> Fears of danger, privacy concerns, difficulty obtaining user buy-in, technology failures, and perception that remote support services are cost-prohibitive were common responses as to why departments overseeing long-term care services in the various states

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<sup>88</sup> Wagner et al., *supra* note 74, at 340.

<sup>89</sup> *Home & Community-Based Services 1915(c)*, MEDICAID.GOV, <https://www.medicaid.gov/medicaid/home-community-based-services/home-community-based-services-authorities/home-community-based-services-1915c/index.html> [<https://perma.cc/HTM9-2GMU>] (last visited Jan. 12, 2024).

<sup>90</sup> *Id.*

<sup>91</sup> 42 U.S.C. § 1396n(c)(2)(A)-(E).

<sup>92</sup> Wagner et al., *supra* note 74, at 340.

<sup>93</sup> *Id.* at 345.



do not offer a remote support service in their HCBS waivers.<sup>94</sup> Remote support monitoring is a relatively new service and not many studies indicate whether these concerns are well-founded or not.<sup>95</sup> Indeed, states that do offer remote support services could not obtain basic information like the frequency of people enrolled in remote support or the average amount spent on remote support equipment and services.<sup>96</sup> In short, whether the above concerns regarding remote support services are well-founded will need to be studied further.

While many states are hesitant to include remote support services in the HCBS waiver programs, Ohio and Missouri have led the way in offering technology-based support services. In 2018, former governor of Ohio, John Kasich, signed an executive order declaring Ohio a “Technology First” state.<sup>97</sup> In practice, “Technology First” means that all state developmental disabilities agencies in Ohio must consider whether an individual with a developmental disability can have their needs met by using technology before direct in-person care staff will be considered.<sup>98</sup> Shortly after this executive order, the Missouri Department of Mental Health also became a “Technology-First” state with the same policy of considering the use of technology before direct support professionals.<sup>99</sup>

#### D. Allowing Medicaid to Cover Remote Support Technology and Making the United States “Technology First”

As described in Part I.B of this Comment, prior to the enactment of the Omnibus Reconciliation Act of 1981, Medicaid only covered comprehensive long-term care services in institutional settings.<sup>100</sup> This Act allows states to develop waivers that allow Medicaid to cover long-term care in community-based settings instead of institutional settings so long as the waivers meet federal guidelines.<sup>101</sup> As such, states can develop waivers that allow Medicaid to cover remote support technology.<sup>102</sup> Yet, states have been hesitant to cover remote support technology in their Medicaid

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<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 348.

<sup>96</sup> *Id.*

<sup>97</sup> John R. Kasich, *Executive Order 2018-06k: The Establishment of the Technology First Initiative and the Ohio Technology First Council to Expand the Use of Supportive Technology for Individuals with Developmental Disabilities*, NISONGER CENTER (May 24, 2018), <https://nisonger.osu.edu/wp-content/uploads/2017/02/Technology-First-State-Signed-Executive-Order.pdf> [<https://perma.cc/9CQZ-G8BU>].

<sup>98</sup> *Id.*

<sup>99</sup> *Technology First*, MISSOURI DEPARTMENT OF MENTAL HEALTH, <https://dmh.mo.gov/dev-disabilities/technology-first> [<https://perma.cc/2875-DD6S>] (last visited January 12, 2024).

<sup>100</sup> Shirk, *supra* note 4, at 4.

<sup>101</sup> *Home & Community-Based Services 1915(c)*, *supra* note 89.

<sup>102</sup> Wagner et al, *supra* note 74, at 341-42.

state plan.<sup>103</sup> With the slow spread, the federal government could help accelerate the use of remote support technology in all states by reforming the Medicaid Act to automatically cover remote support technology. Doing so would mean that individual states would not have to submit an HCBS waiver to the federal government to allow its state Medicaid plan to cover remote support technology. As a result, Medicaid would cover remote support technology in all 50 states, not just 18.

The federal government could further accelerate the usage of this technology by developing a “Technology First” mandate like Ohio and Missouri. Doing so would require agencies tasked with determining the services individuals with long-term care need to consider technology before direct care workers. Presumably, this would lead to more people utilizing remote support technology instead of caregivers, thereby reducing reliance on caregivers and helping to alleviate the caregiver shortage crisis. In sum, the federal government should reform the Medicaid Act to automatically cover remote support technology and create a “Technology First” mandate to help alleviate the caregiver shortage.

## CONCLUSION

The caregiver shortage is truly a crisis that is likely to worsen as the demand for caregivers is expected to increase. Not having enough caregivers can lead to rights violations, abuse, neglect, and death for individuals relying on caregivers, and threatens the goals of the HCBS system. Reforms are needed to help alleviate this crisis, and the federal government can do so by amending the Medicaid Act so that Medicaid automatically covers remote support technology. Further, the federal government should adopt initiatives undertaken by Ohio and Missouri and declare the United States a “Technology First” nation, requiring technology to be considered before caregivers when ascertaining an individual’s needs. These reforms will help reduce the reliance on caregivers, better protect the rights of individuals receiving long-term care service and promote the goals of the HCBS system.

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<sup>103</sup> See *id.* at 340.