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Re: Employee Scheduling (Call-In Pay)

On behalf of the members of the New York State Association of Health Care Providers, Inc. (HCP), thank you for the opportunity to provide comments on the employee scheduling regulations that were included in the New York State Register on December 12, 2018.

HCP is a trade association representing approximately 350 offices of licensed home care services agencies (LHCASAs), certified home health agencies (CHHAs), and related health organizations throughout New York State.

After careful review of the proposed employee scheduling regulations and receiving valuable input from its members, HCP is gravely concerned that these regulations would create significant risk to the health and safety of the persons served by home care industry employees and add significant financial and administrative burdens if applied to New York State's home care industry. The home care industry provides crucial care to some of our state's most needy individuals. For the following reasons, HCP strongly urges the Department of Labor to exclude home care from the proposed regulations

Home Care Scheduling is Beyond the Employer's Control

The home care industry often works on short turnaround times with respect to scheduling much needed care. A scenario that home care and companionship companies routinely address is the need to quickly adjust care schedules due to admittance or discharge from a hospital or other facility.

It is unrealistic to mandate that an employee's schedule be arranged within 14 days when there are unplanned occurrences in the home that may lead to an immediate need for or cancellation of services. If a social worker from a local hospital calls a home care agency on Friday afternoon looking for services that night, it may be untenable for a home care agency to schedule a home care aide in advance. Initial requests for services are often made within one to two days; therefore, to place a scheduling burden on behalf of the home care provider is often unworkable. Situations such as this would force home care agencies to either violate the proposed regulations or deny individuals the care they need.

Home Care Agencies Lack Funds to Meet Regulation Requirements

By far the largest source of funding that makes this care possible comes from the State's Medicaid program. Because of this, our members are dependent on State funds that are passed through Managed Care Organizations to provide care and pay their home care aides.

Since New York began its move towards a \$15 minimum wage, the State has allocated funds to home care agencies designed to offset the financial burden associated with this increase, a burden that otherwise could not be met by a large portion of agencies. Even still, many agencies are provided reimbursement rates that fall short of the amount needed to offset the annual increase in wages, forcing them to struggle to make ends meet. The additional two to four hours of call-in pay in the circumstances set forth by the proposed regulations does not coincide with current State and managed care organization reimbursement rates; therefore, the home care provider would solely be held liable for paying the additional wages, threatening the financial viability of the home care agency and in turn potentially jeopardizing access to care.

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HCP firmly believes that home care most certainly falls within the definition of “employees whose duties are necessary to protect the health or safety of the public or any person”. Given the inability of providers to meet the associated prerequisite that “employees also receive weekly compensation that exceeds the number of compensable hours worked times the applicable basic minimum wage rate” that are imposed on them by the reimbursement rates provided by Medicaid, HCP strongly urges the Department of Labor explicitly exempt the home care industry from this requirement.

Employee-Focused Scheduling

Additionally, agencies that provide home care are employee-focused and strive to provide the greatest degree of both predictability as well as flexibility to their employees when it comes to scheduling as the previously mentioned challenges allow. This mandate could discourage workers from working in the industry if the flexibility of choosing a shift(s) or work location is taken away. Home care providers arrange workers’ schedules to meet the specific needs of the workers, who then provide care to the patients. It is also important to note that home care agencies cannot mandate an aide to take a new or existing assignment. In fact, in many instances, home care aides often create their own schedules.

The home care industry experiences challenges with the retention of aides due to the difficult work providing this care involves. For this reason, agencies have a vested interest in doing everything they can to ensure that their workers are provided with scheduling that is predictable and meets their needs.

The Consumer Directed Personal Assistance Program (CDPAP)

HCP believes the Consumer Directed Personal Assistance Program (CDPAP) should not be included in this proposed regulation. Under CDPAS regulations, the consumer is in charge of the hiring and scheduling of the individual provider in-home care. The individual providing the care is then paid by an agency which serves as a Fiscal Intermediary. Given that under this program the agency lacks the power to control scheduling, HCP firmly believes that CDPAP should also be excluded from the regulations.

Recommendations

Given the crucial nature of the care provided by the home care agency to some of the state’s most vulnerable populations including the elderly and those with disabilities that require assistance to be able to remain in the comfort of their homes instead of being moved to an institutional setting, HCP strongly urges the Department of Labor to exempt the home care industry from these requirements. HCP firmly believes that if services are necessary to protect the health and safety of an individual, no new requirement should be imposed on those services that may jeopardize the provision of such care.

HCP Firmly believes that the nature of how the need for home care services must be met and the inability of providers to cover the cost associated with the proposed regulations demands that home care be exempted. If applied to the industry, the requirements set forth in the proposed regulations would have a dramatic and unintended effect on the cost of care and safety of the vulnerable populations that require home care to remain in the community and may compromise access to care. Therefore, HCP strongly recommends that the Department of Labor exclude home care from the regulations.

For these reasons, HCP and HCP home care provider members urge the State reconsider implementing the employee scheduling regulations.

If you have any questions, please contact Tom Conlon, Associate for Public Policy, at 518.463.1118, extension 811, or at conlon@nyshcp.org.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathy Febraio".

Kathy Febraio, CAE

President