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Ms. Megan Baldwin  
Assistant Secretary for Health  
New York State Capitol  
Albany, New York 12224  
[Megan.Baldwin@exec.ny.gov](mailto:Megan.Baldwin@exec.ny.gov)

Re: Employee Scheduling (Call-In Pay)

Dear Ms. Baldwin:

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 November 22, 2017.

HCP is a trade association representing approximately 350 offices of licensed home care services agencies (LHCSAs), 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 a large number of home care providers, HCP believes that these regulations would create additional and significant financial and administrative burdens on New York State's home care's industry. Currently, home care providers across the State are struggling due to inadequate reimbursement for State-imposed minimum wage increases and numerous other unfunded mandates, in addition to complying with stringent State and Federal health and labor regulations. Furthermore, home care providers already have best practices in place to address employee scheduling, including paying employees when there is a cancellation or other unforeseen occasion. It is our firm belief that the home care industry should not be included in these new employee scheduling regulations.

HCP is aware of recommendations made during hearings held regarding employee scheduling to exclude the health care industry, including home care, from potential regulations. It was specified that health care and home care employers must react quickly to unscheduled employee absences to protect the health of clients and employer's licensure. Furthermore, it was noted that such regulations could have a disproportionate effect on small employers.

HCP has solicited input from the home care provider community on the proposed regulations and how they would impact home care agencies, staff and clients. Home care providers strongly believe that 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.

HCP and HCP home care provider members urge the State to take the following information and circumstances into consideration when reviewing the employee scheduling regulations:

- ***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 services.*** The home care industry often works on short turnaround times with respect to

scheduling and cancelling shifts for those in need. 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. For instance, home care services evolve due to a client's change in health condition, unforeseeable hospitalizations, or in some instances, death. The additional two to four hours of call-in pay in these circumstances do 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.

- ***Home care agencies cannot mandate an aide to take a new or existing assignment.*** In many instances, home care aides often create their own schedules. 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 within one to two days; therefore, to place a scheduling burden on behalf of the home care provider is often unworkable.
- ***On-call professional staff that are employed and “available to report to work” are already compensated for their time.*** The on-call professional employees that are employed by home care agencies are already being compensated for their services, and they often have set schedules. In many instances, the home care provider will compensate the on-call employee additionally when the employee receives or makes a phone call, or conducts a visit. The proposed regulations, as written, do not take into effect current on-call practices set forth by home care providers.
- ***Home care agencies across the State struggle with recruitment and retention of staff.*** To mandate that a home care agency staff two weeks in advance, when home care providers are facing staffing shortages Statewide is impractical in the home care provider community.
- ***Home care providers would be mandated to pay additional wages in client-safety matters.*** Currently, home care providers cannot bill for payment when an employee must stay with a client when relief is unavailable due to weather or other staffing-related circumstances because the scenario becomes a client safety matter. The regulations would impose an additional financial burden on the home care provider.
- ***The Consumer Directed Personal Assistance Program (CDPAS) 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. This program should most certainly be exempt from the scheduling 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 Alyssa Lovelace, HCP's Director for Public Policy, at 518.463.1118, extension 818, or [lovelace@nyshcp.org](mailto:lovelace@nyshcp.org).

Sincerely,



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