



Claudia J. Hammar
President

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October 1, 2018

Hon. Andrew M. Cuomo
The Executive Chamber
Albany, NY 12224

Re: Immediate Action Needed to Address 24 Hour Live-in Cases

Dear Governor Cuomo:

Last week, the New York State (NYS) Supreme Court ruled that the NYS Department of Labor (DOL) Emergency Regulation permitting 24-hour live-in workers to receive 13 hours of pay for 24-hour shifts (the 13-Hour Rule), provided that the workers receive eight hours for sleep and three hours for meal periods on such shifts, was null, void and invalid.

In the wake of this decision, the New York State Association of Health Care Providers, Inc. (HCP) respectfully requests that the State take immediate action to address the financial and legal crises facing New York's home care industry, and more importantly the care of the patients we serve, as a result of the State Supreme Court's recent 24 hour live-in ruling.

HCP urges the State to take the following actions:

- First, the State should immediately appeal the New York State Supreme Court's decision invalidating DOL's 13-Hour Rule. Under this ruling, providers must pay for all 24 hours of a live-in shift – leaving home care agencies that have been following DOL's longstanding guidance in legal and financial jeopardy.
- The State should immediately provide emergency funding with corresponding guidance to managed care organizations and home care agencies so that providers can pay their workers for all 24 hours of a live-in shift and ensure care for the vulnerable individuals relying on these services. It is estimated that the rulings associated with 24-hour live-in cases will cost approximately \$4 billion retrospectively, and approximately \$1.4 billion prospectively based upon 2017 data and the approximate number of cases most agencies serve.
- Should the Administration decide that care for individuals currently receiving 24-hour services also be invalidated due to the cost to the State, the State should issue guidance to managed care organizations and providers with a plan of action to ensure continuity of care for those relying on 24-hour care.

While we appreciate that DOL issued Emergency Regulations on October 9, 2017 affirming the State's position that home care workers should be paid for 13 hours of a 24 hour live-in shift, more needs to be done to ensure New York's frailest populations have the option to remain in

their homes and communities. For these reasons, HCP respectfully requests that the State take immediate action to ensure that home care agencies will be able to continue to provide these essential services to the New York's most vulnerable populations.

If you have any questions regarding the information above, please do not hesitate to reach out directly at 518.463.1118 or via email at hammar@nyshcp.org.

Sincerely,

Claudia Hammar

A handwritten signature in cursive script that reads "Claudia Hammar".

President

Cc:

Donna Frescatore

Donna Girvin

Paul Francis

Megan Baldwin

Dan Sheppard

Jonathan Bick

Dan Carmody

Frank Walsh

Pico Ben-Amotz

Michael Ogborn

Erin Kate Calicchia

Karis Browder

Mark Kissinger

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