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UNH Position on Home Care Employee Compensation

New York's home care employees work tirelessly to help older adults, individuals living with disabilities, and other members of the community who require assistance with the activities of daily living. Three United Neighborhood Houses (UNH) member organizations provide non-profit home care services to their communities: Chinese-American Planning Council, St. Nick's Alliance, and Sunnyside Community Services. Together, these settlement houses provide service to over 4,500 clients with nearly 7,500 workers throughout New York every year, allowing vulnerable community members to remain at home with individualized care as opposed to moving to more institutionalized settings. This model benefits clients, who are able to age in place and maintain dignity in their own home and community, as well as the state, which saves money by keeping people out of more expensive institutional settings.

Recent legal activity surrounding the issue of home care employee wages is cause for concern, with the potential to spark devastating financial consequences for home care organizations, their employees, and the patients served. **UNH is extremely concerned about the future of home care employee compensation. If courts rule in favor of changing current regulations by requiring full 24-hour pay for a 24-hour shift, New York State must reimburse home care providers immediately for any additional financial burden to ensure they can continue to serve individuals in need.**

Background:

Under long-standing New York State Department of Labor (DOL) regulations, a residential home care employee who works for 24 hours must only be paid for 13 of those hours, with the remaining hours exempt and reserved for sleep (8 hours, 5 of which must be uninterrupted) and meals (3 hours). Many employees working 24-hour shifts are interrupted by their patients' various needs, and as a result an employee can be paid for 24 hours of a 24-hour shift if the employee received less than 5 hours of uninterrupted sleep. In practice, however, these additional hours can be difficult for employees to quantify, and it can be difficult for organizations to obtain additional reimbursement from their insurance plans. This means that employees often end up doing more than 13 hours of work for only 13 hours of pay, or employers take a loss because they are not reimbursed by their plans.

A series of recent state court decisions¹, brought at the behest of workers, invalidated the DOL's 13-hour rule, stating that employees must be paid at least the minimum wage for all 24 hours of a 24-hour shift, regardless of meal or sleep time. These cases await final hearings from the Court of Appeals and federal court. If the courts rule in favor of the plaintiffs and the 13-hour rule is abolished, **it is possible that providers will be held liable for substantial back-pay for the last 6 years, which would bankrupt many home care providers and wreak havoc on the industry, which the home care industry at large estimates could cost up to \$6 billion.**

In October 2017, the DOL issued emergency, temporary regulations that required home care employees continue being paid for 13 hours out of a 24-hour work shift. The regulations were intended to delay the court decision that requires 24-hour pay for 24-hour shifts, and it appears the DOL intends to attempt to make this ruling permanent.

¹ *Andryeyeva v. New York Health Care, Morena v. Future Care Health Services, and Tokhtaman v. Human Care*

UNH Position:

UNH's nonprofit settlement house providers are committed to ensuring its employees are well-compensated for their labor and treated fairly. The current 13-hour rule is an economically unjust model for employees who often work more hours than they are paid for. At the same time, imminent changes to current laws cannot be advanced without concern for the financial viability of providers.

If court rulings invalidate the 13-hour rule and the DOL emergency regulations end, service providers will be responsible for covering additional wages both prospectively and likely also retroactively for the last 6 years. This financial burden could decimate nonprofit providers, with some of our members individually estimating **tens of millions of dollars in potential liability**. This loss would cause ripple effects, including a loss of home care services to the community and the individuals who rely on those services, a loss to insurance plans, and a loss to New York State, which will have to cover the costs of higher-cost service provision. Home care represents 80-85% of the operating budget of UNH's settlement houses that operate these programs, which means this requirement could also pose a serious threat to the stability of these organizations and their important wrap-around community services.

In a state where the fastest growing population is over 65, and the demand for home care is increasing, it is critical that New York State have a robust home care sector where the employees are fairly compensated, the organizations are robustly funded, and the patients receive high quality care in the dignity of their homes. Without paying competitive wages and ensuring fair working conditions, the State cannot hope to build and retain such a home care sector. Because providers are at the mercy of State contracts and reimbursements, this decision falls squarely on the State to shape the future of home health care.

Should the 13-hour rule be abolished, with or without the back-pay component, it is imperative that the State of New York reimburse providers immediately for the additional financial burden. Service providers should not be penalized for consistently following the State's labor rules. If the courts find that the State's regulations are misguided, it is the State's responsibility to cover any incurred costs to service providers.

UNH will continue to work with partner organizations and the State to ensure New York develops an appropriate balance of fair employee pay standards, just working conditions, and reasonable reimbursement rates and standards for home care workers.

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