



45 Broadway | 22nd Floor | New York, NY 10006
(212) 967-0322 | www.unhny.org

UNH State Fiscal Year 2019-20 Budget & Policy Priorities **Home Care Employee Compensation**

Home Care Employee Compensation – Recent legal activity surrounding home care employee wages is cause for significant concern, with the potential to spark devastating financial consequences for home care providers, their employees, and patients. Three UNH member settlement houses offer non-profit home care services to their communities, providing service to over 4,500 clients with nearly 7,500 workers throughout New York every year. If courts rule in favor of changing current home care employee compensation 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. At the same time, the State has a responsibility to implement policy changes to address economic justice for workers.

Challenge and Opportunity – 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 and meals, with some limited exceptions. In practice, employees often end up doing more than 13 hours of work for only 13 hours of pay, or they receive the appropriate pay while employers take a loss because they are not reimbursed by their plans.

A series of recent state court decisions, 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, and temporary DOL emergency regulations are currently maintaining the 13-hour rule. If the courts rule in favor of the plaintiffs and the 13-hour rule is abolished, providers will be responsible to nearly double future wages without any promise of reimbursement from insurance plans. It is also possible that providers will be held liable for substantial back-pay for the last 6 years, despite the fact that providers consistently followed DOL's labor regulations.

This financial liability of both prospective and retroactive wage increases would bankrupt many home care providers and wreak havoc on the industry, which the home care industry at large estimates could cost upwards of \$1 billion per year, or \$6 billion for the retroactive component alone. This could decimate nonprofit providers, with some UNH 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 in more institutional settings. 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 viability of these organizations and their important wrap-around community services.

Should the home care 13-hour pay rule be abolished, with or without the back-pay component, it is the State's responsibility to cover any additional financial liability, since the lawsuits are challenging guidelines that providers have consistently been following. This could be done through a contingency fund in the FY 2019-2020 budget to cover retroactive costs and higher Medicaid reimbursement rates for prospective costs.

(over)

At the same time, UNH's nonprofit settlement house providers are committed to ensuring its employees are well-compensated for their labor and treated fairly, and the current 13-hour rule is an economically unjust model. Regardless of the outcome of the lawsuits, the State should consider changing existing pay structures to be fairer to workers, for example, by fully funding 24-hour shifts through Medicaid, by using more split shifts in certain cases, or evaluating variable pay scales during on-call hours. The State should also consider a short-term task force and a permanent office to ensure stability and sustainability of the home care sector.

UNH recommendation: The State should fully fund home care providers for any prospective and retroactive financial liability resulting from pending lawsuits; and the State should consider policy changes to ensure fairer working conditions such as fully funding 24-hour shifts through Medicaid, more split shifts, and variable pay scales for on-call hours, in addition to a short-term task force and permanent office to stabilize the industry.

For more information, please contact Susan Stamler at (212) 967-0322 ext. 327 or sstamler@unbny.org