

IMPORTANT UPDATES ON HOME CARE MATTERS

Home Care Alert
January 9, 2019

Hodgson Russ files Amicus Brief Urging the Court of Appeals to Affirm the 13-Hour Rule

On December 27, 2018, Hodgson Russ filed an amicus brief with the New York Court of Appeals on behalf of the New York State Association of Health Care Providers, urging the Court to affirm the 13-hour rule and reverse Andryeyeva and Moreno. As readers of our alerts will know, these decisions held that aides on 24-hour cases must be paid for all hours that they were on a 24-hour shift, irrespective of how many hours the aides received for sleep and/or meals.

The Court of Appeals is scheduled to hear oral arguments in this matter on February 12, 2019, with a written decision to follow thereafter. With legislative session opening today, providers are urged to speak with their elected officials about the uncertainty created by these cases, and the creation of a special emergency fund by the State to assist providers should the Court of Appeals rule against the industry. Without such funding from the State, and should the Court of Appeals strike the 13-hour rule, providers who have had 24-hour cases and paid aides on those cases in accordance with New York State Department of Labor guidance, will be exposed to costly claims that they will not be able to pay.

DOH Issues Guidance Concerning Advanced HHA Training Program Requirements

The New York State Department of Health (DOH) and the State Education Department (SED) recently issued a Dear Administrator Letter (the “DAL”) concerning the Advanced Home Health Aide (AHHA) Training Program (“Training Program”). The DAL provides, in relevant part:

- All Training Programs must be approved by the DOH or SED
- The Training Program must be a current Home Health Aide Training Program currently listed on the Home Care Worker Registry with at least one (1) year of experience operating
- The Training Programs must have enrolled at least ten (10) students in a full course within the past twelve (12) months

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- The Training Program is not allowed to charge tuition for training
- Each AHHA Training Program candidate must be 18 years old and have a valid HHA certificate and be listed on the Home Care Worker Registry as a certified HHA
- Each candidate must have at least 1 year of experience providing home health aide or personal care aide services, or a combination of both
- Each AHHA must be able to read, speak, and write English; perform basic math; and be Cardio Pulmonary Risk (CPR), or Basic Life Support (BCLS) certified
- Each AHHA Training Program curriculum must include the assignment of advanced tasks, working with RNS, medication administration, injections, injection safety, infection control, and documenting care
- Each AHHA Training Program candidate must take and pass the New York Medication Aide Certification Exam (MACE) within 180 days from the start of the Training Program. Upon successful completion of the MACE, the candidate will be issued a certificate and be listed in the Home Care Worker Registry as a certified AHHA

Another MLTC is Closing: ICS Community Care

Effective March 31, 2019, enrollees with MLTC ICS Community Care will be automatically transferred/enrolled to VNS, unless they affirmatively choose to transfer to a different MLTC. The State is in the process of developing the transition plan and working with ICS to ensure providers are paid. The State, however, is also expected to provide some reimbursement and assistance to agencies for services rendered to ICS members, although the exact amount of the assistance/reimbursement or the methodology that the State will use to determine how much to pay each provider is unclear.