On behalf of the Home Care Alliance of Massachusetts and our privately paid home care agency members, we appreciate the opportunity to offer comments on the proposed promulgation of regulation 454 CMR 27.00 and proposed repeal of regulation 455 CMR 2.00 by the Department of Labor Standards (DLS).

The Home Care Alliance is a trade association of 200 home care agencies that are both Medicare-certified – authorized to provide medical services for reimbursement from Medicare and MassHealth – and privately paid, non-medical supportive services. Both types of agencies deliver care that helps keep people independent, whether it is skilled nursing and therapy services or non-medical support services such as assistance with activities of daily living (ADL), companionship or transportation to and from medical appointments.

As of December 19th, private-pay members of the HCA are no longer regulated under the Employment and Staffing Agency regulations and we want to take this opportunity to thank DLS Director Heather Rowe and her staff for their support and communication during this time of transition.

Concerning the proposed promulgation of 454 CMR 27.00 and repeal of 455 CMR 2.00, our agencies seek clarification on Hours Worked under section 27.04. It is noted that the employer and the employee may agree in writing to exclude meal periods and a sleeping period of not more than eight hours. It is unclear, however, if those meal periods are in addition to the eight hours of sleeping time. If a home care worker is in the home for a 24-hour period, it should be clearly defined outside of any written agreements pertaining to what time for meals and sleeping is counted and compensable. We would also appreciate clarification of a reasonable length of those meal periods and whether they are permissible even though the worker is required to remain at the worksite during the meal break.

Also, our members have concerns about Section 27.07 relative to Notice and Recordkeeping. The discussion about posting a notice in the primary languages of a cohort of any 5% or more of the employer’s workforce raises a question: How do employers discover employee’s primary languages? Home care agencies are anxious that this section appears to violate the rules of Massachusetts Commission Against Discrimination (MCAD) and, moreover, an employee may have the right to refuse to answer. The HCA looks forward to clarification on this point so that agencies are able to meet the requirements of the regulation lawfully and respectfully.

We appreciate the opportunity to offer comments and please contact us with any questions.

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