On behalf of the Home Care Alliance of Massachusetts, we appreciate the opportunity to offer comments on 940 CMR 33.00 relative to earned sick time.

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 supportive services. Offerings provided by our members range from companionship and homemaking to skilled nursing and therapy.

The employees of these organizations, whether they are clinicians or aides, typically visit several clients during the course of a workday. Depending on client needs, work hours can fluctuate significantly from day to day and week to week. This differs from personal care attendants hired directly by the consumer, not employed by agencies and are not currently offered earned sick leave.

The Home Care Alliance appreciates the Attorney General’s “transition year” provision, which we think will go a long way for our agencies that have been offering such policies. However, the “transition year” memo and proposed language lacks guidance on differentiating between part-time versus full-time employees, especially part-time employees with prorated benefits.

Similar to several other employer groups that have already offered public testimony, home care holds some qualities that we aim to highlight. The first is the high rate of turnover in the home care workforce, which leads to issues tracking employees for up to one year. The regulation as proposed would require agencies to track the accrual time of workers both full-time and part-time who by and large are “seasonal” along with workers that come and go sporadically. In many cases, agencies will be burdened by tracking hundreds of former employees that may not return to employment at that same agency and those that do return, even part-time, could take advantage of their earned time. The Home Care Alliance respectfully asks for this tracking and reinstatement timeline to be shortened significantly.

Another area where home care agencies are relatively unique is with a high percentage of on-call staff. Whether an aide or a clinician is unable to make a visit to a patient’s home or whether a situation with a patient demands a worker be called in, we would appreciate clarification under the “Same hourly rate” section of the regulation. Particularly, at what point do agencies need to start accruing time for on-call employees? There are various points where they are called to respond to triage a call and/or make a
visit to a patient’s home as “on-call” meets the Fair Labor Standards Act for non-compensable time.

Also under the “Same hourly rate” section, home care agencies are seeking clarification on premium versus base rate wages. For those employees that receive a premium rate, or higher rate in lieu of benefits, would they need to be paid the premium rate when using sick time or the base rate they receive for administrative and other non-direct care work? Moreover, can home care agencies establish a base rate for employees that attain premium shifts like weekends and holidays? Home Care Alliance members are unclear on what the hourly rate should be.

Another point of confusion from home care agencies comes under Section 33.05, “Notice of use of Earned Sick Time.” Subsection (4) explains that “In no event, however, may an employer request additional medical or other documentation from an employee substantiating the need to use earned sick time until the employee uses more than 24 consecutive hours of earned sick time.” This presents a problem in home health care where a part-time employee may work 24 hours over the course of more than one week. The home care industry requests guidance on what action agencies should take in these types of instances as well as the “24 consecutive work hours” language in Section 33.06(1) when an employer may request to verify that earned sick time was used for an authorized purpose. Further, agencies are also curious how this language affects Family Medical Leave Act tracking and related requests of medical certification.

The immediately aforementioned clarification also comes with another unique quality to home care services. As agencies are sending aides and clinicians out to people’s homes to provide supportive and medical care, our agencies believe it is necessary to ensure any sickness from the worker is not transferred to the patient or consumer. Many agencies currently require medical clearance for workers who are out sick before they can return to making home visits. Many of the patients and consumers are frail elders and these companies that strive to provide quality services should be able to determine whether these companies can safely send a worker into the home to provide care. The Home Care Alliance therefore requests that home care agencies are able to at least verify through documentation that their workers do not have a contagious disease or illness.

We greatly appreciate your consideration of our comments and suggestions. Please do not hesitate to contact us (jfuccione@thinkhomecare.org, 617-482-8830) with further questions.

Sincerely,

James Fuccione
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Home Care Alliance of Massachusetts