



March 27, 2020

The Honorable Eugene Scalia  
Secretary  
U.S. Department of Labor  
200 Constitution Ave, N.W.  
Washington, D.C. 20210

Re: Families First Coronavirus Response Act—Definition of “Health Care Provider”

Dear Secretary Scalia:

On March 20, 2020, the U.S. Department of Labor held a Town Hall event regarding the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act as included in the Families First Coronavirus Response Act. We write now to provide input regarding the Department’s development of regulations and guidance on the application of the exclusion of employees that qualify as a “health care provider.”

The Tennessee Association for Home Care (TAHC) respectfully submits these comments as a supplement to comments already provided by the National Association for Home Health and Hospice (NAHC) and the Home Care Association of America (HCAOA). TAHC is the only entity representing the interests of every segment of home care providers in Tennessee. Our members employ the individuals who provide health care in the homes of the wide range of persons needing their services to stay safely in their own residences, recovering from numerous forms of illness, rehabilitating from injuries and surgeries, maintaining themselves at home with multiple comorbidities, struggling from dementia, and seeking palliation at the end of life. These employees care for prematurely born children with technology dependent conditions, persons with life altering disabilities, and vulnerable elderly. The work performed by the employees of home care, home health, and hospice companies is essential to about 250,000 Tennesseans each year. Without it, these people face acute exacerbation in their conditions, slowed recovery, deterioration in bodily functions, and death.

We are very concerned that the current provisions in the Family Medical Leave Act rules defining a “health care provider” fall far short of recognizing the full range of individuals that provide essential health care services. The exclusion of nurses, therapists, social workers and other home care workers simply does not represent the reality of the more than 12 million Americans who depend on these health care providers to meet their health care needs each day. Additionally, we are concerned that the oversight undermines the Centers for Disease Control’s (CDC) and others’ recommendations to keep COVID-19 positive individuals in their homes for treatment in order to reserve space in acute care settings for those who most need it and to diminish the likelihood of community exposures.

The purpose of the exclusion of a “health care provider” under the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act is to ensure an adequate healthcare workforce as the nation deals with this pandemic. If these crucial caregivers are not providing care, over 12 million individuals receiving health care from them will be put in jeopardy – many of them will be misplaced to acute settings where space is scarce. These essential caregivers are serving those afflicted with COVID-19 as well as millions more who have unrelated care needs while also at risk of contracting COVID-19. They are health care providers to the core from their training to their services. They must be included in the categories of health care providers to be subject to exclusion in the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act.

Accordingly, TAHC, on behalf of its nearly 400 members, respectfully recommends that the Department revise its rules and include those individuals providing home care and hospice to be considered as “health care providers.” We understand that this recommendation is consistent with regulations and policy adhered to by all federal programs that fund health care services, including Medicare, Medicaid and the VA, as well as existing Department of Labor regulations.

We recommend revising the applicable rule such that the following employees be excluded from the definition of “eligible employees” as they are all a “health care provider.”

Any employee of an entity who provides health care services in the place of residence of an individual including, but not limited to nurses, physical therapists, speech-language pathologists, occupational therapists, therapy assistants, medical social workers, home health aides, home care aides, homemaker-home health aides, personal care attendants, hospice chaplains, home medical equipment technicians, pharmacists, and individuals providing administrative and management supports to direct care employees.

Even in good times, healthcare industries—including home care—are forced to overcome workforce challenges to remain adequately staffed such that essential services are not at risk. In these unprecedented times, the current definition of “health care provider” not only fails to adequately recognize the important work these professionals perform daily, but also places an unnecessary and unjustified burden on the companies that employ them.

Thank you for your consideration.

Sincerely,



Maegan Carr Martin, JD  
Executive Director  
Tennessee Association for Home Care