



September 21, 2018

RE: EMAC Hardship Waiver Draft Regulations Listening Session: Written Comments

The Home Care Aide Council (Council) is pleased to submit these comments for your consideration as you prepare the final regulations to establish an EMAC Supplement Hardship Waiver process in accordance with Outside Section 68 of the Fiscal Year 2019 budget.

The Council represents over 140 home care agencies providing care to seniors and disabled adults in communities throughout Massachusetts. The majority of our members contract with the state's 26 Aging Services Access Points (ASAPs) to provide essential home care aide services to low-income elders enrolled in the state's robust home care system.

Annually, Massachusetts provides approximately 23.7 million hours of home care aide and home health aide service hours to consumers through MassHealth and state funded programs. Approximately 20,000 home care aides provide these direct care services which serve as the backbone of the health care system in the community. Without these critical workers and the supports they provide; low-income elders and disabled adults would not be able to remain in their homes.

As you finalize the regulations that will set the parameters for the EMAC hardship waiver, we hope that you will consider the disproportionate impact of EMAC on the home care industry.

It is estimated that the EMAC Supplement will cost home care agencies \$7 million in the first year. This estimate is based on a review of actual data from home care agencies who have received the first two quarter EMAC Supplement bills.

Home care agencies that contract with the ASAPs provide a critical service to low-income, vulnerable elders. Due to limited state funding, the home care system cannot offset this \$7 million annual unfunded mandate without decreasing service hours to consumers. Unlike other employers, home care agencies have no ability to raise state set rates to cover the EMAC Supplement.

In addition, the home care aide industry is disproportionately impacted by the EMAC Supplement due to the part-time nature of the work. Many home care aides do not qualify for employer sponsored health insurance plans as their schedules constantly fluctuate to meet the changing needs of consumers. In response to a workforce survey conducted last year, home care aides reported they work on average 28 hours a week and 48% indicated they are on MassHealth. This high rate of MassHealth use by home care aides is caused in part by their inconsistent hours, but also by the low-wages associated with these positions, stemming from the low rates paid to ASAP contracting home care agencies. Due to skyrocketing health care costs, the few home care workers who are able to secure a full-time schedule and qualify to receive benefits from their employer, cannot afford to pay the balance of their monthly premium and their co-payments without falling behind on other bills. Under the current rate system, the

contracts cannot support a living wage and benefits that enable the workforce to purchase any kind of meaningful and affordable health care coverage.

Due to the high turnover experienced by home care agencies quarter to quarter, recently estimated to be 16% per quarter, the industry will not reach the \$750 per employee cap anticipated when the EMAC Supplement was developed and implemented. Unlike other employers who retain their employees on a consistent annual basis, home care agencies will continue to be hit with the high additional \$750 fees each quarter, without relief. This added cost creates an undue and unfair burden on home care agency employers that could not have been anticipated when the EMAC Supplement was developed.

Given the disproportionate impact EMAC has on the home care industry, we request that an exemption from the EMAC Supplement be included in the draft regulations for home care agencies that contract with ASAPs, due to the nature of the industry and the unique challenges, additional costs, and constraints facing our workforce.

We request that you state explicitly in the regulations that home care agencies that contract with the ASAPs are eligible for the EMAC hardship waiver because the ASAP rates are set by the state thereby limiting a home care agency's ability to offset the impact of the EMAC Supplement. While home care agencies are employers providing a service that serves the public interest, which is one of the qualifications set forth in the law and the draft regulations, the language states they "may be given special consideration". We believe the language should be stronger stating that these employers "shall" be given special consideration given the specific challenges facing home care employers that contract with ASAPs.

Additionally, many home care agencies fall under the small employer eligibility category, as 25% of the agencies that contract with the ASAPs and responded to a recent survey indicated that they have 50 or fewer home care aide employees. Again, the language states only that these employers "may be given special consideration". We believe the language should be amended to "shall", given the unique structure and workforce of home care employers that contract with ASAPs. The service is provided to low-income vulnerable elders at rates that are well below typical private pay market value.

If providers are expected to shoulder a \$7 million annual unfunded fee, the state runs the risk of losing providers, and in turn, creating a shortage of service providers for the most vulnerable population – low-income elders. Without relief, the EMAC Supplement will likely result in home care agencies dropping contracts with the ASAPs or not taking ASAP cases so they can assign their workforce to private pay clients whose rates can be raised to pay for the additional cost. We do not want to see this happen as it would be detrimental to low income elders and the Commonwealth's home care system.

The proposed regulations do not offer employers the opportunity to appeal a denial by the Director of a hardship waiver application. We would recommend adding a process for employers to appeal the Director's decision on hardship waiver applications.

We urge you to clarify further the hardship waiver eligibility criteria, including an explanation about the number of criteria an employer must meet to be determined qualified. We strongly request that employers that serve the public interest by providing human services or long-term care services and that receive a significant share of revenues from governmental programs, not have to meet any other criteria to qualify for the hardship waiver.

Furthermore, “termination of employer’s business,” one of the proposed eligibility criteria, is an impossible standard for the hardship waiver. A business should not have to face the brink of termination of their business before they are eligible to apply for a waiver and face the possibility that it will be denied.

The proposed timeline for the submission of applications to be considered for the waiver in the third quarter is unreasonably short. Like other industries, most home care agencies use payroll services and each payroll company works at a different pace in getting payroll data to DUA. In past quarters, agencies have reported not getting their EMAC Supplement bills until late in the month following the end of the quarter. This means that employers may not receive their EMAC Supplement report until after the proposed October 12 deadline. Therefore, we suggest that you move the deadline for the applications to a later date, such as October 15 or October 31.

The proposed list of documentation that will need to be included with the application for a hardship waiver will take a great deal of time for employers to obtain. To acquire the documentation, employers will need data and input from Human Resources Departments and/or payroll companies, their accountants/CPA and/or attorney to ensure compliance with the requirements. This is a time-consuming process which supports moving the deadline for submission of the applications.

We suggest that documentation showing the total impact to an employer of Q1, Q2 and Q3 EMAC Supplement payments be sufficient grounds for a hardship waiver. And, we recommend that submission of supporting documentation for the waiver application be required on an annual rather than a quarterly basis

We encourage you to include the sunset clause in the regulations to indicate that the Supplement program will end on December 31, 2019.

Thank you for your consideration of our recommendations. We are happy to meet with your staff to discuss these recommendations and to provide additional information and data. Please contact Julie Watt Faqir at jwattfaqir@hcacouncil.org or 617-744-6561 if you have any questions.

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