



Live-In Home Care Guidance **DOH Directs Agencies to Maintain Live-In Cases**

Last month, the New York State Department of Health ([DOH](#)) issued a statement to home care providers related to current live-in case lawsuits. DOH said that agencies are expected to continue staffing and covering live-in cases in accordance with current managed care contracts, labor requirements, MLTC Policy 14.08, Medicaid agreements and applicable labor requirements. It further advised that live-in cases should not be converted to continuous 24-hour split-shift care unless the patient meets the criteria for the higher level of care.

DOH's notice was issued in response to a [ruling](#) in [April](#) by the Appellate Division, First Department, in the *Tokhtaman* case. In that case, the court held that a "live-in" home health aide is entitled to compensation for every hour of a 24-hour live-in shift regardless of how many hours the aide actually works unless he/she is a "residential employee". This ruling rejected the New York State Department of Labor's interpretation of its regulation that requires agencies to pay aides for only 13 hours of a 24-hour shift, provided the aide is afforded eight hours of sleep, five of which are uninterrupted, and three hours for meals.

On August 15, the same appellate court denied the defendant agency's motion to appeal the decision to the Court of Appeals, New York's highest court. This means that the *Tokhtaman* case will now proceed to discovery and trial at the trial court level to determine if the plaintiff qualifies as a "residential employee". DOH indicated in its guidance that it would provide a further update once the case is resolved or if there is otherwise a need to do so.

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