NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE ALBANY, NEW YORK

REQUEST FOR COMPLIANCE

Fair Hearing #: 8517276Q

Agency:

University of Rochester Medicine Home Care Fidelis

Hearing Date: March 2, 2023 Decision Date: March 10, 2023 Case #: <u>REDACTED</u>

Name: Teresa Carroll Address: <u>REDACTED</u> City/State/Zip: <u>REDACTED</u> Phone: <u>REDACTED</u> Representative: Richard Marchese, Esq. Address: Woods, Oviatt, Gilman 1900 Bausch and Lomb Pl City/State/Zip: Rochester, NY 14604 Phone: 585-987-2859

Representative: Bruce Darling Address: Center for Disability Rights 497 State Street City/State/Zip: Rochester, NY 14608 Phone: 585-546-7510 (o) / 585-370-6690 (c)

If you do not feel that the local social services Agency has complied with your fair hearing decision, state the reason below and return this entire form to the address indicated below:

New York State Office of Temporary and Disability Assistance Office of Administrative Hearings Compliance Unit P.O. Box 1930 Albany, NY 12201-1930

> Phone: 800-342-3334 Fax: (518) 473-6735

Please be as specific as you can in describing what action has not been complied with or what benefits have not been provided -giving dollar amounts and dates where possible.

I do not feel that URMHC has complied with my decision because:

<u>URMHC has completely failed to comply with the decision and orders from the Administrative Law</u> <u>Judge.</u> In the decision and order, the Commissioner's Designee wrote:

> The CHHA's (University of Rochester Medical Health Center "URMHC" determination to discontinue Appellant's Home Health Aide Services was not correct and is reversed.

1. The CHHA (University of Rochester Medical Health Center "URMHC") is directed to restore Appellant's Home Health Aide Services to Home Health Aid (S9122 x 473 hours);

2. The CHHA (University of Rochester Medical Health Center "URMHC") is directed to restore Appellant's Home Skilled Nursing visits (T1030 x 14 visits);

My understanding of the decision is that URMHC was instructed to restore my Home Health Aide Services. The 473 hours would be for 60 days, which is approximately 55 hours per week.

Since the fair hearing decision, I have only been offered three possible aides. All of the aides and the shifts that have been offered were known to URMHC to be insufficient and unworkable.

I rely on my aide service for all of my daily needs.

I have previously communicated that I do not want to receive services from male attendants, have two cats, and am on the waiting list for a service dog. URMHC only offered me only three aides as follows:

Aide 1: One male aide, has availability from 12pm – 6pm Mon-Friday (dog allergy)

Aide 2: One male aide, has availability from 9:00am – 11:00am Mon- Wed-Friday (dog and cat allergy)

Aide 3: One female aide, availability from 9:30am-12pm Mon-Wed -Friday (cat allergy)

I have clearly communicated a concern about not wanting men to provide my assistance. This is not an uncommon or unreasonable expectation, particularly for a Disabled woman who lives alone and relies on these services. Generally speaking, there are sufficient male clients and female clients in home care that a woman's gender preference for an attendant is accommodated. If needed, I can provide copies of electronic communication demonstrating that I have communicated this to URMHC.

I have two cats. URMHC is aware of this as we have discussed whether the aides are allowed to clean my litter box. Offering aides with cat allergies is a non-starter. URMHC simply indicates these attendants have "availability". I do not know the severity of their allergies and whether they would be willing to work in a home with cats. I have to assume that if it is listed as an issue, they are not willing to work in these circumstances.

I did not have a service dog in my home when URMHC incorrectly discontinued my Home Health Aide services because my third service dog, Gus, had died in August 2021. However, URMHC is aware that I have had service dogs in my home for many years. In the last few months, I was accepted in a program to receive a custom-trained service dog. This is not an immediate issue with the attendants that have been offered – because the aide with a dog allergy is also male – but it is notable that URMHC included the information. Frankly, it seems like they tried to identify three attendants who would not be able to work for me so they could say that I rejected services.

The number of hours and the schedule these attendants could work is insufficient and would not meet my needs. URMHC knows this. As a starting point, the only female aide URMHC offered – even if she was able to work in a household with two cats – would have only provided assistance for 2.5 hours, from 9:30 AM until Noon, three days a week. None of the options would cover weekends.

As noted in the fair hearing, I had been receiving HHA services from URMHC as shown here:

<u>Monday</u> 6:30 am – 8:30 am (2 hours) Noon – 1 pm (1 hours) 5:30 pm – 6:30 pm (1 hour) 10 pm – 12 midnight (2 hours) Total for day: 6 hours

<u>Tuesday</u> 6:30 am – 8:30 am (2 hours) Noon – 1 pm (1 hour) 5:30 pm – 6:30 pm (1 hour) 10 pm – 1 am (bowel program - 3 hours) Total for day: 7 hours <u>Wednesday</u> 6:30 am – 8:30 am (2 hours) Noon – 1 pm (1 hours) 5:30 pm – 6:30 pm (1 hour) 10 pm – 12 midnight (2 hours) Total for day: 6 hours

<u>Thursday</u>

6:30 am – 8:30 am (2 hours) Noon – 1 pm (1 hour) 5:30 pm – 6:30 pm (1 hour) 10 pm – 1 am (bowel program - 3 hours) Total for day: 7 hours

<u>Friday</u>

6:30 am – 8:30 am (2 hours) 10 pm – 12 midnight (2 hours) Total for day: 4 hours

<u>Saturday</u> 7 am – 1 pm (6 hours) 10 pm – 12 midnight (2 hours) Total for day: 8 hours

<u>Alternating Saturday</u>* AM (2 hours) The arrival time would depend on the people coming. 10 pm – 11 pm (1 hour) Total for day: 3 hours

<u>Sunday</u> 7 am – 1 pm (6 hours) 10 pm – 1 am (bowel program - 3 hours) Total for day: 9 hours

<u>Alternating Sunday</u>* AM (2 hours) The arrival time would depend on the people coming. PM (bowel program - 3 hours) Total for day: 5 hours

* These were reduced hours because URMHC would not provide aides.

The schedule of aide service is directly related to the assistance I require.

<u>Morning service</u> – The aide gets me up, dressed and ready for the day. Having someone to assist allows me to eat something in the morning. If URMHC had asked me, I would have explained that the morning shift could be extended to three hours (6:30 AM - 9:30 AM) by shifting the midday hour earlier. The aide then would set things up so I have access to anything I would need until the next aide comes in.

<u>Noon shift</u> – This hour was established to check my skin midday to manage a spot I was having difficulty healing. I have a new cushion which seems to have resolved the issue which is why the time could move back to the morning shift.

<u>Dinner hour</u> – This hour allows me to eat dinner and address any emergent needs at that time.

<u>Evening shift</u> – This is when I would get ready for bed and perform my bowel program. This shift would start at 10:00 PM or within some reasonable time after that. As an adult, this is a reasonable time to get ready to go to bed. It gives me some private time and the ability to have a productive day. If I am forced to go to bed earlier than 10:00 PM, I am not able to complete tasks, including volunteer work which helps others and provides me with satisfaction and enjoyment.

I shower during the evening shift. This is also when my HHA would do my bowel program. It was a time that worked well for my body and the aides. When the bowel program was complete and I was cleaned up, I could go to bed. This meant the aide would not be required to dress, re-dress and transfer me multiple times after completing the bowel program.

Timing for going to bed is also very important for maintaining my skin integrity. If I go to bed too early, I spend too much time lying in one position and may develop skin breakdowns.

My understanding from the fair hearing is that staffing problems are not a reason to discontinue my HHA services. It is my understanding that URMHC has a shortage of aides. During email exchanges, my advocates at the Center for Disability Rights have offered several solutions to URMHC which would help me get services.

<u>Reassign the aides that have been offered to me to other URMHC clients and utilize those</u> <u>other attendants to assist me.</u> The male aides could work for men or women who are comfortable having a man assist them. All of the aides could also be assigned to households without pets. This would free up other aides to work for me.

<u>Utilize staff from other parts of URMC.</u> With over 26,000 employees, it seems that URMC would have people with the required skills and training who could cover the hours I need. My home is 6 miles or 15 minutes away from Strong Memorial Hospital. They could offer the hours I need to qualified staff at that facility who could either pick up the hours as part of a scheduled hospital-based shift or as additional work.

<u>URMHC could slow intakes.</u> If the agency has such a serious staffing shortage that it cannot cover my hours, they should not be adding new cases or truncating people's hours. If they

have individuals needing post-acute care, those individuals could remain at Strong Memorial where they can get the assistance they need or receive services elsewhere. This would allow URMHC to concentrate on covering the hours of people already admitted to the home care agency - including me - who are going without service.

Increase the rate of pay or pay a premium shift differential to cover my shifts. Aides currently working for URMHC (or URMC) could be offered a higher rate of pay to cover my shifts. If there are problems covering the specific times I need assistance, this could address that.

URMHC has not responded to any of these suggestions or offered other aides. There are other things URMHC could do.

<u>Recruit for Home Health Aides in Rochester.</u> I reviewed the jobs posted by URMHC on their own website. If the problem with covering my hours is entirely due to a lack of aides, it seems that *the minimum the home care agency could do is publish a job posting on their website to recruit for Home Health Aides.* They aren't even doing that. The have posted on their website that they are recruiting for Home Health Aides in Geneva, NY, but not Rochester where I live. It is possible that not posting the HHA position on their website was an oversight, but they don't have a Home Health Aide position posted on Indeed either where they are also recruiting for HHAs in Geneva. I am attaching PDFs of the recruitment pages as documentation of their failure even to do basic recruiting to meet my needs.

<u>Offer a hiring bonus as part of their recruitment efforts.</u> URMHC is offering a \$10,000 hiring bonus for nurses. Even a smaller hiring bonus would attract qualified Home Health Aides. If URMHC gave a \$5,000 sign on bonus to three HHAs to cover my services, it would only cost the organization an extra \$15,000. They can afford that. It would only amount to 0.0004% (four ten-thousands of a percent) of the Medical Center's \$3.8 Billion budget.

Divert money from their print and television advertising budget to address the problem with coverage and quality of care. While I was going without needed services, literally lying in feces for hours at a time because UR nurses left me alone, URMC paid to advertise itself during the Super Bowl! On average, advertisers paid \$7 million for a 30-second ad. Additionally, the URMC is running regular television commercials in Rochester. Although it isn't my place to tell the University and its medical center how to run their operations, it seems that the funds could better be used to meet the needs of people who are currently supposed to be receiving care and going without services – like myself – rather than expensive, high profile advertising. Frankly, it is really appalling to see those ads while going without authorized services that I desperately need.

I am concerned that the communication from URMHC seems to be trying to change the expectations on my services. I live alone and do not have anyone in the area who can provide my assistance when an aide is not available. I was considered a "must fill." When my regular aide wasn't available, URMHC would send another aide that had been trained to provide my services. If no aide was available, they would send a nurse to assist me or sometimes send two nurses and reduce the hours they could be there. Before my services were discontinued and URMHC was ordered to restore them, I would work with the aide

coordinator to address any scheduling issues or time changes in advance. They would let me know any times that were open which helped us identify any gaps in advance and address them.

Now, from the emails I have received, instead of restoring my services, it looks like URMHC wants to change my care plan to make me responsible for coverage if they don't send someone. In emails from the CEO, she has indicated that if they cannot provide services, I need to use my "backup plan". Because I did not have any "backup plan" other than the agency finding and sending coverage, my advocates have asked that URMHC provide this alleged document. URMHC has sent nothing in response to those requests. I will add that URMHC tried to schedule a meeting with my doctor to set up a new plan of care, but the meeting was cancelled "due to a scheduling conflict" after they were notified advocates from CDR would be attending.

I am concerned that I do not have the ability to go without my services and that URMHC is trying to get me to agree to something that is unworkable and inconsistent with the services I previously was receiving. Based on what they have offered me so far – and their lack of effort to cover my hours as authorized in my care plan – I am concerned that URMHC is trying to force me to agree to a situation that will result in me going without HHA services that I need which could cause a medical or life-threatening emergency and result in my institutionalization.

It is my understanding that when the Catanzano case was decided, Monroe County which operated a CHHA at the time established requirements and paid a premium rate to ensure coverage of shifts. Additionally, under Title II of the Americans with Disabilities Act, the Supreme Court decided in the Olmstead decision that I have a right to live and receive services in the most integrated setting. That right is not contingent upon me securing unpaid services when an agency is unable to cover my needs (i.e. a back up plan).

I understand that URMHC does not want to serve me, but I do not have other options for getting Home Health Aide services. There are only three CHHAs in the Rochester area (URMHC, RRH Home Care, Home Care Rochester). None of the other CHHAs will accept my case, therefore it is critical that URMHC restore my services, as they have been directed.

Fidelis has been unable to get any other CHHA to accept my case. As an alternative to services from a CHHA, they have offered to contract with a Licensed Home Care Services Agency (LHCSA) to provide me with individuals who have been trained as Home Health Aides. It is my understanding – and the understanding of my CDR advocates – that a LHCSA is not authorized to provide HHA services as those must be provided by a CHHA in New York State. Because this would fundamentally change how HHA services are provided, CDR has reached out to NYSDOH to clarify whether this is even permissible. We are awaiting their response. Additionally, I am also concerned that if Fidelis contracts with a LHCSA to provide me with HHC services, that I would be agreeing to forgo my due process rights under the Catanzano decision because LHCSAs are not covered under that decision.

Thank you.

Be sure to include your Social Security Number and a phone number where you can be reached in the space below.

Signature <u>REDACTED</u> <u>REDACTED</u> signed April 16, 2023 Coronavirus (COVID-19): <u>Latest Updates</u> | <u>Visitation Policies</u> | <u>COVID-19</u> <u>Testing</u> | <u>Vaccine Information</u>





Current Opportunities

As one of the most progressive home healthcare agencies in the region, we offer a variety of opportunities for you to provide compassionate and expert care as a community healthcare professional or paraprofessional.

Clinical Team Manager NFP

Rochester, NY

Provide supervision for reflective practice, motivational interviewing and staff development, to provide primary support and appropriate oversight to the Nurse Home Visitors and to build and model a strengths-based, client-centered culture. Responsible to work within the local community and lead agency structure to assure that the Nurse-Family Partnership (NFP) Program is implemented in accordance with the established guidelines and contact requirements. Will be responsible for providing comprehensive community health nursing to women enrolled in Nurse Family Partnership as needed.

Job Details

Health Home Care Manager

Rochester, NY

Provides comprehensive Health Home care managemen

Hey there, how can I help you?

patients assigned to VNSC. This includes managing a caseload and working with outreach workers and the client care team to engage, enroll, assess, develop, and carry out a comprehensive care plan to address all medical, behavioral health, substance abuse psychosocial needs of the client.

Job Details

MOW Driver/Server - Part-Time

Rochester, NY

Delivers and serves meals to Meals on Wheels clients and delivers meals to volunteers at drop sites. Performs extra duties as required.

Job Details

Quality Nurse Educator

Rochester, NY

The Performance Specialist is responsible for collaborating with clinicians at established points in time to assure accurate training, education, and understanding of agency policies, procedures, and standards. The position serves to provide appropriate support and promote quality patient care, positive patient outcomes, and staff retention.

Job Details

Professional Recruiter

Rochester, NY

Responsible for developing and implementing recruiting strategies. Responsible for complete employment process including advertising, sourcing, screening, scheduling interviews, and insuring compliance with government employment hiring regulations. Also, responsible for oversight of preplacement compliance.

Job Details

Hey there, how can I help you?

Hospice - LPN

Rochester, NY

Provides direct patient services with a patient and family centered care environment under the direction of an RN.

Job Details

Clinical Team Manager - Pediatric

Rochester, NY, Pittsford, NY

The Clinical Team Manager is responsible for the clinical, fiscal and administrative management of the provision of service to a group of pediatric and perinatal patients receiving home care services within the agency's geographic service area while promoting Patient and Family Centered Care.

Job Details

Home Infusion Nurse (RN) - \$10,000 - Sign On Bonus!!!

Q Rochester, NY

Responsible for placing, monitoring and assessing intravenous systems, medications and/or products. Utilizing physicians' orders and professional skills, the Home Infusion Therapy Services RN develops and implements a plan that meets each patient's specific needs and is in compliance with accrediting organization standards, federal and state regulations, reimbursement guidelines, as well as Agency policies and procedures.

Job Details

Licensed Practical Nurse (LPN)

Rochester, NY

Hey there, how can I help you?

3 of 8

4/9/2023, 6:58 PM

Are you interested in working 1:1 with patients in their home? UR Medicine Home Care is growing! The LPN provides direct patient services with a patient and family centered care environment under the direction of an RN.

Job Details

Registered Nurse Level 2 Case Manager

Rochester, NY

Provides direct patient care and/or case management within a patient and family centered care environment. The registered nurse makes the initial evaluation visit, regularly reevaluates the patient's nursing needs, initiates the plan of care and necessary revisions, furnishes those services requiring substantial and specialized nursing skill, initiates appropriate preventive and rehabilitative nursing procedures, prepares clinical and progress notes, coordinates services, informs the physician and other personnel of changes in the patient's condition and needs, counsels the patient and family in meeting nursing and related needs, participates in in-service programs, and supervises and teaches other nursing personnel.

Job Details

LPN Intake Nurse - Weekends

Rochester, NY

Initiates home care referrals from emails and faxes from in-system hospitals by evaluating and arranging for services, supplies and equipment for home care. Serves as a resource for community services if home care referral is not appropriate. Assists weekend Communication and Triage Specialist with patient call management as directed.

Job Details

Hey there, how can I help you?

Hospice (RN) - \$10,000 - Sign On Bonus...

Q Rochester, NY

Are you interested in working 1:1 with patients in their home? UR Medicine Home Care is growing! Evaluates, admits, and provides case management to patients and families for Hospice services. Coordinates care and services in collaboration with the interdisciplinary team. Provides education to patients, families, and providers regarding the hospice philosophy. Provides an ongoing assessment of patients, ensuring appropriate initiation of care plans, services/levels, and assessment information that accurately reflects the patient's clinical, functional, and psychosocial needs. Serves as a resource and main contact to patients and families through the end-of-life process; ensuring quality of life, best practice hospice care, and patient's/family's wishes are maintained and met with dignity and respect.

Job Details

Registered Nurse (RN) - Flex - \$45.00 per hour

Rochester, NY

Pay rate starting at \$45.00 per hour! Provides direct patient care and/or case management within a patient and family centered care environment. Caseload assignment geography will vary based on patient coverage needs. The registered nurse makes the initial evaluation visit, regularly reevaluates the patient's nursing needs, initiates the plan of care and necessary revisions, furnishes those services requiring substantial and specialized nursing skill, initiates appropriate preventive and rehabilitative nursing procedures, prepares clinical and progress notes, coordinates services, informs the physician and other personnel of changes in the patient's condition and needs, counsels the patient and family in meeting nursing and related needs, participates in in-service programs.

Job Details

Speech Language Pathologist - Per Diem

Q Geneva, NY

Responsible for providing professional speech therapy services to clients in their hor \times with communication and swallowing disorders. Admits c Hey there, how can I help you? ne care course of treatment. Confers and collaborates with the home care treatment plan. Independently provides and documents visits. Collaborate 1 with other members of the client care team.

Job Details

RN - Monday - Friday - \$10,000 Sign On Bonus!

Rochester, NY

This is a new and exciting opportunity for an RN who have always wanted to get into Home Care. This position will allow you to see a variety of patients, work with them 1:1 in their home and use your clinical skills without working in a hospital setting. A great benefit to this position is you do not have to work weekends!!!

Job Details

Registered Nurse (RN) - Level 1

🗣 Geneva, NY

This is a new and exciting opportunity for an RN who have always wanted to get into Home Care. This position will allow you to see a variety of patients 1:1 in their home and use your clinical skills without working in a hospital setting.

Job Details

Certified Home Health Aide Finger Lakes (HHA)

Q Geneva, NY

To provide personal care, meal preparation, and light housekeeping assistance to clients.

Job Details

Registered Nurse - Case Manager RN

Hey there, how can I help you?

Geneva, NY

Provides direct patient care and/or case management within a patient and family ce care environment. The registered nurse makes the initial evaluation visit, regularly

reevaluates the patient's nursing needs, initiates the plan of care and necessary revisions, furnishes those services requiring substantial and specialized nursing skill, initiates appropriate preventive and rehabilitative nursing procedures, prepares clinical and progress notes, coordinates services, informs the physician and other personnel of changes in the patient's condition and needs, counsels the patient and family in meeting nursing and related needs, participates in in-service programs, and supervises and teaches other nursing personnel.

Job Details

Hospice Night on Call RN

Rochester, NY

Provide nursing care to patient/family/caregiver as directed by the supervising Case Manager or the Hospice Medical Director/Administrator and in compliance with all applicable laws and regulations. Provide patient services based on plan of care. Identify other physical, psychological, social and spiritual needs for assigned patients. Work closely with other members of the interdisciplinary team to ensure all patient and family care needs are being met.

Job Details

RN Evenings 30/40

Rochester, NY

Provides the initial and ongoing assessment of patients, ensuring appropriate initiation of care plans, services/levels, and OASIS assessment information that accurately reflects the patient's clinical, functional, and psychosocial needs.

Job Details

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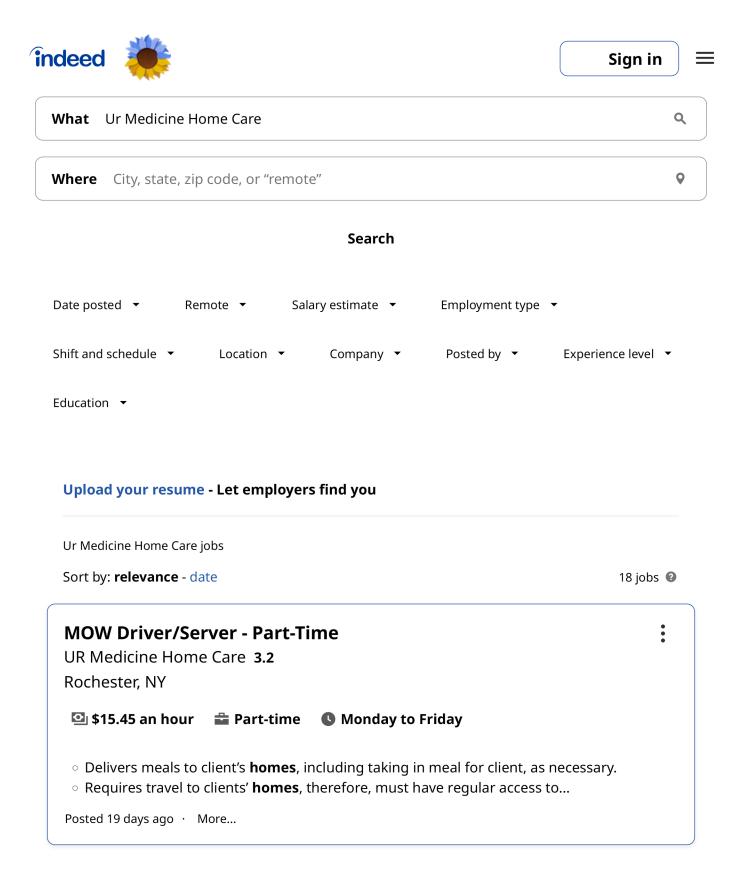
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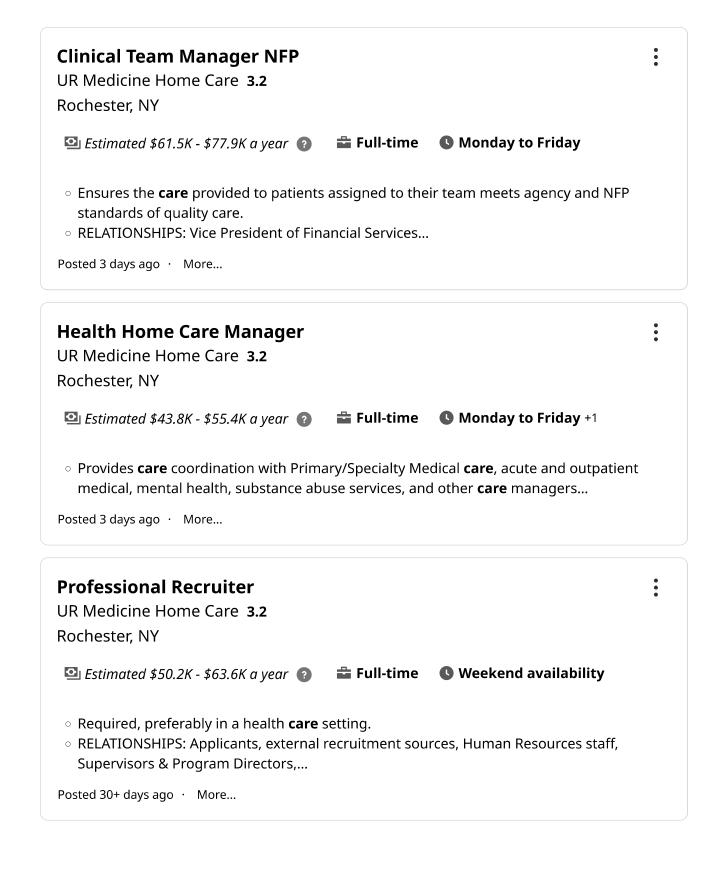
- Geneva, NY (4)
- Pittsford, NY (1)
- Rochester, NY (16)

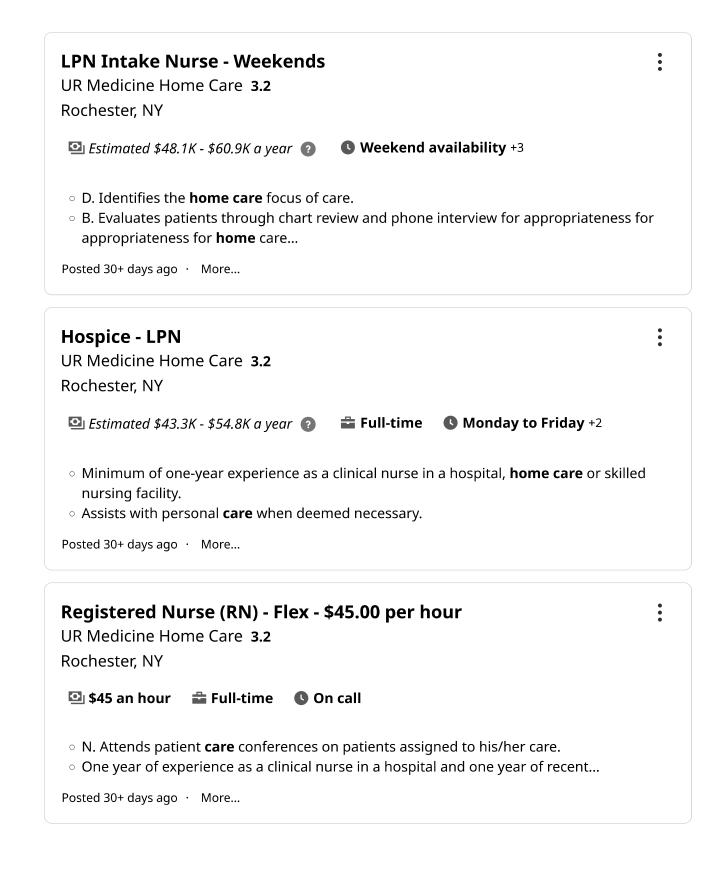
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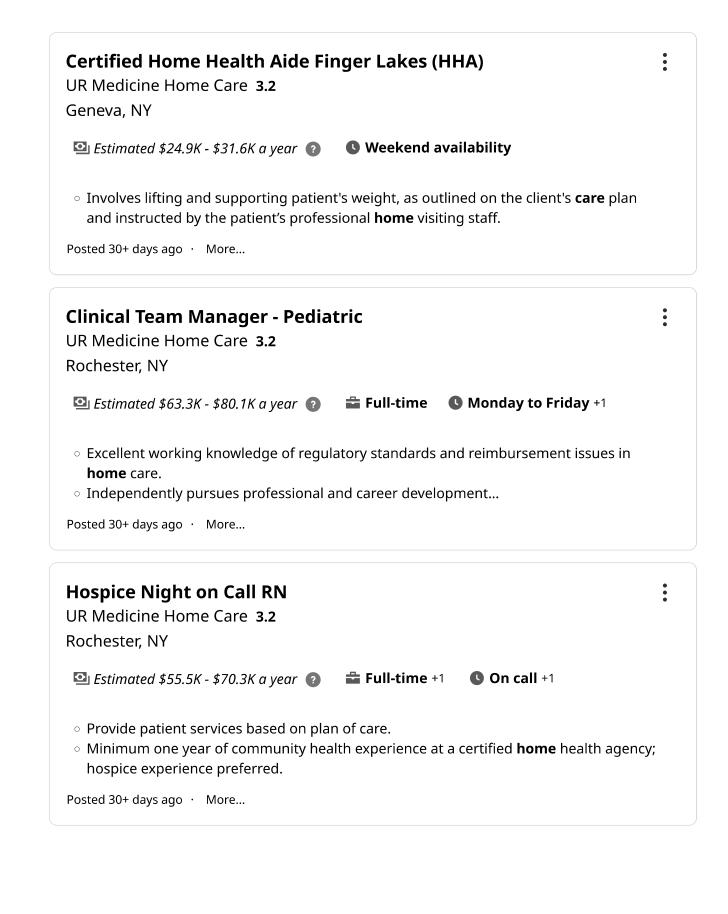
- Education (1)
- Health Home (1)
- Home Health Aide (1)
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- □ Intake/Authorizations (1)
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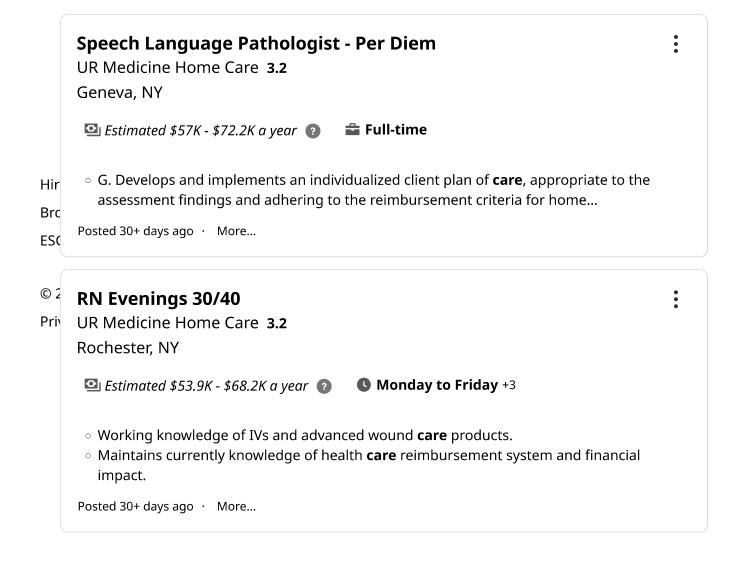








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