

SECTION 3614-C

Home care worker wage parity

Public Health (PBH) CHAPTER 45, ARTICLE 36

§ 3614-c. Home care worker wage parity. 1. As used in this section, the following terms shall have the following meaning:

(a) "Living wage law" means any law enacted by Nassau, Suffolk or Westchester county or a city with a population of one million or more which establishes a minimum wage for some or all employees who perform work on contracts with such county or city.

(b) "Total compensation" means all wages and other direct compensation paid to or provided on behalf of the employee including, but not limited to, wages, health, education or pension benefits, supplements in lieu of benefits and compensated time off, except that it does not include employer taxes or employer portion of payments for statutory benefits, including but not limited to FICA, disability insurance, unemployment insurance and workers' compensation.

(c) "Prevailing rate of total compensation" means the average hourly amount of total compensation paid to all home care aides covered by whatever collectively bargained agreement covers the greatest number of home care aides in a city with a population of one million or more. For purposes of this definition, any set of collectively bargained agreements in such city with substantially the same terms and conditions relating to total compensation shall be considered as a single collectively bargained agreement.

(d) "Home care aide" means a home health aide, personal care aide, home attendant, personal assistant performing consumer directed personal assistance services pursuant to section three hundred sixty-five-f of the social services law, or other licensed or unlicensed person whose primary responsibility includes the provision of in-home assistance with activities of daily living, instrumental activities of daily living or health-related tasks; provided, however, that home care aide does not include any individual (i) working on a casual basis, or (ii) (except

for a person employed under the consumer directed personal assistance program under section three hundred sixty-five-f of the social services law) who is a relative through blood, marriage or adoption of: (1) the employer; or (2) the person for whom the worker is delivering services, under a program funded or administered by federal, state or local government.

(e) "Managed care plan" means any managed care program, organization or demonstration covering personal care or home health aide services, and which receives premiums funded, in whole or in part, by the New York state medical assistance program, including but not limited to all Medicaid managed care, Medicaid managed long term care, Medicaid advantage, and Medicaid advantage plus plans and all programs of all-inclusive care for the elderly.

(f) "Episode of care" means any service unit reimbursed, in whole or in part, by the New York state medical assistance program, whether through direct reimbursement or covered by a premium payment, and which covers, in whole or in part, any service provided by a home care aide, including but not limited to all service units defined as visits, hours, days, months or episodes.

(g) "Cash portion of the minimum rate of home care aide total compensation" means the minimum amount of home care aide total compensation that may be paid in cash wages, as determined by the department in consultation with the department of labor.

(h) "Benefit portion of the minimum rate of home care aide total compensation" means the portion of home care aide total compensation that may be paid in cash or health, education or pension benefits, wage differentials, supplements in lieu of benefits and compensated time off, as determined by the department in consultation with the department of labor. Cash wages paid pursuant to increases in the state or federal minimum wage cannot be used to satisfy the benefit portion of the minimum rate of home care aide total compensation.

(i) "Fiscal intermediary" means a fiscal intermediary in the consumer directed personal assistance program under section three hundred sixty-five-f of the social services law.

2. Notwithstanding any inconsistent provision of law, rule or regulation, no payments by government agencies shall be made to

certified home health agencies, long term home health care programs, managed care plans, fiscal intermediaries, the nursing home transition and diversion waiver program under section three hundred sixty-six of the social services law, or the traumatic brain injury waiver program under section twenty-seven hundred forty of this chapter for any episode of care furnished, in whole or in part, by any home care aide who is compensated at amounts less than the applicable minimum rate of home care aide total compensation established pursuant to this section.

3. (a) The minimum rate of home care aide total compensation in a city with a population of one million or more shall be:

(i) for the period March first, two thousand twelve through February twenty-eighth, two thousand thirteen, ninety percent of the total compensation mandated by the living wage law of such city;

(ii) for the period March first, two thousand thirteen through February twenty-eighth, two thousand fourteen, ninety-five percent of the total compensation mandated by the living wage law of such city;

(iii) for the period March first, two thousand fourteen through March thirty-first two thousand sixteen, no less than the prevailing rate of total compensation as of January first, two thousand eleven, or the total compensation mandated by the living wage law of such city, whichever is greater;

(iv) for the period April first, two thousand sixteen, through December thirty-first, two thousand twenty-two the cash portion of the minimum rate of home care aide total compensation shall be ten dollars or the minimum wage as laid out in paragraph (a) of subdivision one of section six hundred fifty-two of the labor law, whichever is higher. The benefit portion of the minimum rate of home care aide total compensation shall be four dollars and nine cents;

(v) for the period January first, two thousand twenty-three through December thirty-first, two thousand twenty-three, the cash portion of the minimum rate of home care aide total compensation shall be the minimum wage for home care aides in the applicable region, as defined in section thirty-six hundred fourteen-f of this article. The benefit portion of the minimum rate of home care aide total compensation shall be four dollars and nine cents;

(vi) for all periods on or after January first, two thousand twenty-four, the cash portion of the minimum rate of home care aide total compensation shall be the minimum wage for home care aides in the applicable region, as defined in section thirty-six hundred fourteen-f of this article. The benefit portion of the minimum rate of home care aide total compensation shall be two dollars and fifty-four cents.

(b) The minimum rate of home care aide total compensation in the counties of Nassau, Suffolk and Westchester shall be:

(i) for the period March first, two thousand thirteen through February twenty-eighth, two thousand fourteen, ninety percent of the total compensation mandated by the living wage law as set on March first, two thousand thirteen of a city with a population of a million or more;

(ii) for the period March first, two thousand fourteen through February twenty-eighth, two thousand fifteen, ninety-five percent of the total compensation mandated by the living wage law as set on March first, two thousand fourteen of a city with a population of a million or more;

(iii) for the period March first, two thousand fifteen, through February twenty-eighth, two thousand sixteen, one hundred percent of the total compensation mandated by the living wage law as set on March first, two thousand fifteen of a city with a population of a million or more;

(iv) for the period March first, two thousand sixteen through December thirty-first, two thousand twenty-two, the cash portion of the minimum rate of home care aide total compensation shall be ten dollars or the minimum wage as laid out in paragraph (b) of subdivision one of section six hundred fifty-two of the labor law, whichever is higher. The benefit portion of the minimum rate of home care aide total compensation shall be three dollars and twenty-two cents;

(v) for the period January first, two thousand twenty-three through December thirty-first, two thousand twenty-three, the cash portion of the minimum rate of home care aide total compensation shall be the minimum wage for the applicable region, as defined in section thirty-six hundred fourteen-f of this article. The benefit portion of the minimum rate of home care aide total compensation shall be three dollars and twenty-two cents;

(vi) for all periods on or after January first, two thousand twenty-four, the cash portion of the minimum rate of home care aide total compensation shall be the minimum wage for the applicable region, as defined in section thirty-six hundred fourteen-f of this article. The benefit portion of the minimum rate of home care aide total compensation shall be one dollar and sixty-seven cents.

4. The terms of this section shall apply equally to services provided by home care aides who work on episodes of care as direct employees of certified home health agencies, long term home health care programs, or managed care plans, or as employees of licensed home care services agencies, limited licensed home care services agencies, or fiscal intermediaries, or under any other arrangement.

5. No payments by government agencies shall be made to certified home health agencies, licensed home care services agencies, long term home health care programs, managed care plans, fiscal intermediaries for any episode of care without the certified home health agency, licensed home care services agency, long term home health care program, managed care plan or the fiscal intermediary, having delivered prior written certification to the commissioner annually, at a time prescribed by the commissioner, on forms prepared by the department in consultation with the department of labor, that all services provided under each episode of care during the period covered by the certification are in full compliance with the terms of this section and any regulations promulgated pursuant to this section and that no portion of the dollars spent or to be spent to satisfy the wage or benefit portion under this section shall be returned to the certified home health agency, licensed home care services agency, long term home health care program, managed care plan, or fiscal intermediary, related persons or entities, other than to a home care aide as defined in this section to whom the wage or benefits are due, as a refund, dividend, profit, or in any other manner. Such written certification shall also verify that the certified home health agency, long term home health care program, or managed care plan has received from the licensed home care services agency, fiscal intermediary, or other third party an annual statement of wage parity hours and expenses on a form provided by the department of labor accompanied by an independently-audited financial statement verifying such expenses.

5-a. No portion of the dollars spent or to be spent to satisfy the

wage or benefit portion under this section shall be returned to the certified home health agency, licensed home care services agency, long term home health care program, managed care plan, or fiscal intermediary, related persons or entities, other than to a home care aide as defined in this section to whom the wage or benefits are due, as a refund, dividend, profit, or in any other manner.

6. If a certified home health agency, long term home health care program or managed care plan elects to provide home care aide services through contracts with licensed home care services agencies, fiscal intermediaries, or through other third parties, provided that the episode of care on which the home care aide works is covered under the terms of this section, the certified home health agency, long term home health care program, or managed care plan shall include in its contracts, a requirement that it be provided with a written certification, verified by oath, from the licensed home care services agency, fiscal intermediary, or other third party, on forms prepared by the department in consultation with the department of labor, which attests to the licensed home care services agency's, fiscal intermediary's, or other third party's compliance with the terms of this section. Such contracts shall also obligate the licensed home care services agency, fiscal intermediary, or other third party to provide the certified home health agency, long term home health care program, or managed care plan all information from the licensed home care services agency, fiscal intermediary or other third party necessary to verify compliance with the terms of this section, which shall include an annual compliance statement of wage parity hours and expenses on a form provided by the department of labor accompanied by an independently-audited financial statement verifying such expenses. Such annual statements shall be available no less than annually for the previous calendar year, at a time as prescribed by the commissioner. Such certifications, the information necessary to verify compliance, and the annual compliance statement and financial statements shall be retained by all certified home health agencies, long term home health care programs, or managed care plans, and all licensed home care services agencies, fiscal intermediaries, or other third parties for a period of no less than ten years, and made available to the department upon request. Any licensed home care services agency, fiscal intermediary, or other third party who shall upon oath verify any statement required to be transmitted under this section and any regulations promulgated pursuant to this section which is known by such party to be false shall be guilty of perjury and punishable as provided

by the penal law.

6-a. The certified home health agency, long term home health care program, or managed care plan shall review and assess the annual compliance statement of wage parity hours and expenses and make a written referral to the department of labor for any reasonably suspected failures of licensed home care services agencies, fiscal intermediaries, or third parties to conform to the wage parity requirements of this section.

7. The commissioner shall distribute to all certified home health agencies, long term home health care programs, managed care plans, licensed home care services agencies, and fiscal intermediaries official notice of the minimum rates of home care aide compensation at least one hundred twenty days prior to the effective date of each minimum rate for each social services district covered by the terms of this section.

7-a. Any certified home health agency, licensed home care services agency, long term home health care program, managed care plan, or fiscal intermediary, or other third party that willfully pays less than such stipulated minimums regarding wages and supplements, as established in this section, shall be guilty of a misdemeanor and upon conviction shall be punished, for a first offense by a fine of five hundred dollars or by imprisonment for not more than thirty days, or by both fine and imprisonment; for a second offense by a fine of one thousand dollars, and in addition thereto the contract on which the violation has occurred shall be forfeited; and no such person or corporation shall be entitled to receive any sum nor shall any officer, agent or employee of the state pay the same or authorize its payment from the funds under his or her charge or control to any person or corporation for work done upon any contract, on which the certified home health agency, licensed home care services agency, long term home health care program, managed care plan, or fiscal intermediary, or other third party has been convicted of a second offense in violation of the provisions of this section.

8. The commissioner is authorized to promulgate regulations, and may promulgate emergency regulations, to implement the provisions of this section.

9. Nothing in this section should be construed as applicable to any service provided by certified home health agencies, licensed home care services agencies, long term home health care programs, managed care

plans, or fiscal intermediaries except for all episodes of care reimbursed in whole or in part by the New York Medicaid program.

10. No certified home health agency, managed care plan, or long term home health care program shall be liable for recoupment of payments or any other penalty under this section for services provided through a licensed home care services agency, fiscal intermediary, or other third party with which the certified home health agency, long term home health care program, or managed care plan has a contract because the licensed agency, fiscal intermediary, or other third party failed to comply with the provisions of this section if the certified home health agency, long term home health care program, or managed care plan has reasonably and in good faith collected certifications and all information required pursuant to this section and conducts the monitoring and reporting required by this section.