



# HOME CARE WORKER WAGE PARITY

Since March 2012 in New York City – and March 2013 in Westchester and Long Island – home care providers have been required to comply with a Worker Wage Parity Law that establishes a “minimum rate of home care aide total compensation.” Now that the rate for 2014 in New York City has reached an unsustainable level and the rate continues to increase for Westchester and Long Island, HCA has redoubled its efforts to advocate funding for home care worker compensation and benefits as well as the reimbursement, through state methodologies and managed care premiums, to support these direct care personnel.

November 2013

GUIDEBOOK

## BACKGROUND

The 2011-12 State Budget included a provision establishing a minimum rate of home care aide total compensation (“worker parity” level) for certain home care workers in New York City (NYC), Westchester and Long Island.

While HCA supports increased wages for home care staff, we have advocated that the Medicaid rates paid to agencies and premiums to managed care plans must accommodate such increases. However, rather than include such revenues, the 2011-12 State Budget actually cut reimbursement to providers. Meanwhile, the 2012-13 and 2013-14 State Budgets have not included funding for this costly mandate.

Through meetings and correspondence with the state Department of Health (DOH) and the Governor’s office since the law was enacted, HCA has repeatedly sought clarification of the language in the law and on the instructions thus far given by DOH. The *Dear Administrator Letters* (DALs) and *Frequently Asked Questions* (FAQs) developed by DOH, unfortunately, have left a lot of questions unanswered and continue to lack the necessary clarity for agencies to understand how to carry out the provisions.

HCA also continues to advocate for adequate reimbursement levels that support home care provider and managed care plan costs for paying the mandated wages.

Specifically, on November 19, HCA sent a letter to State Medicaid Director Jason Helgeson urging dedicated state funding to meet the growing expense of the Wage Parity Law for providers and plans. “HCA emphasizes that the home care/managed care system cannot simply incur these new added costs, on top of the costs of other new added mandates and system changes, by further cutting or otherwise redirecting existing dollars from one source to another,” the letter states. “There must be a dedicated financing mechanism or funding adjustment to address this growing and serious disparity.”

The state has provided some protections for NYC home attendant agencies and personal care providers in Westchester/Long Island to support their payment of the city or county required living wage rate to their personal care aides. Specifically, the state has required Managed Care Organizations (MCOs) to pay personal care providers in NYC, Westchester and Long Island their city or county contracted rate for Medicaid-only patients when personal care became part of the mainstream Medicaid managed care benefit in August 2011.

This policy, in effect from August 1, 2011 through February 29, 2012 for NYC, required MCOs to pay at least the personal care rate established by the NYC Human Resources Administration (HRA) as of August 1, 2011 to all HRA-contracted home attendant vendor agencies.

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A similar state policy has required the MCOs to pay personal care providers in Westchester and Long Island their State published rate paid by the local department of social services (LDSS) for the period August 1, 2011 through February 28, 2013.

However, the state has not continued these requirements beyond these dates.

The state has also required Managed Long term Care (MLTC) plans to pay personal care providers a certain rate for their patients who are mandatorily enrolled into MLTCs. For NYC patients, this rate was first the published rate paid by HRA as of July 1, 2012 and then revised to incorporate any increases in HRA rates since July 1, 2012. For Westchester and Long Island patients, this rate was first the State published rate paid by the LDSS as of July 1, 2012, and later revised to include any increases since July 1, 2012. These policies for NYC, Westchester and Long Island were extended from the original ending date of December 31, 2013 to March 1, 2014.

The purpose of this document is to provide the most recent information available to HCA on the wage parity law in a concise, easy-to-read guidebook format that will assist home care providers in understanding and implementing the law's requirements. Please note that this information may be subject to changes as additional clarifications are provided to HCA.

## Wage Parity General Requirements

The 2011-12 state budget included a provision that establishes a minimum wage ("worker parity") level to be paid to certain home care workers in New York City (starting March 1, 2012) and in Westchester and Long Island (starting March 1, 2013).

### Which Home Care Workers Are Included?

Those included are home health aides, personal care aides, home attendants or other licensed or unlicensed staff whose primary responsibility includes the provision of in-home assistance with activities of daily living, instrumental activities of daily living or health-related tasks. Excluded are relatives hired to care for a family member and personal assistants under the Consumer Directed Personal Assistance Program (CDPAP).

### Which Home Care Agencies or Programs Are Affected?

This requirement applies to Medicaid-reimbursed services provided by aides employed by Certified Home Health Agencies (CHHAs), Long Term Home Health Care Programs (LTHHCPs), and MCOs, including mainstream Medicaid managed care and MLTC plans, as well as to home care aide services provided through contracts with Licensed Home Care Services Agencies (LHCSAs).

The worker parity provisions also apply to the Traumatic Brain Injury and the Nursing Home Transition and Diversion waivers, if the provider is under contract with a CHHA, LTHHCP or MCO, but not to Assisted Living Programs (ALPs).

## Don't NYC, Westchester and Long Island Already Have Living Wage Laws for Personal Care and How Are an Agency's Current Wage Obligations in These Locations Affected by the State Law?

NYC, Westchester and Long Island already have "living wage" laws that require a certain wage be paid by home care agencies that directly contract with the county. These laws cover aides providing care under the personal care program (or home attendant program in NYC) in these counties (those wage amounts are listed below). The state Worker Parity Law, on the other hand, raises the wages of other home care aides in these counties to a level tied to NYC's and/or other counties' local living wage requirements.

As personal care continues to transition from contracts with LDSSs to MCOs, the state Worker Wage Parity Law will further determine the ultimate mandated wage levels. Home care providers that directly contract with HRA (NYC) or their LDSS (Westchester and Long Island) to provide personal care services are required to pay aides a rate that is based on the following local living wage law amounts:

- NYC – \$10 per hour with health insurance benefits or \$11.50 per hour without benefits;
- Westchester – \$11.50 per hour with health insurance benefits or \$13 per hour without benefits;
- Nassau – \$13.35 per hour with health insurance benefits or \$15.21 per hour without benefits (2013, increases annually); and
- Suffolk – \$11.52 per hour with health insurance benefits or \$13.12 per hour without benefits (2013, increases annually).

### Wage Parity Glossary

For purposes of understanding the terminology used in the wage parity statute and throughout this Guidebook, the following definitions apply (unless otherwise indicated).

**Total Compensation** – 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 the employer portion of payments for statutory benefits, including but not limited to FICA, disability insurance, unemployment insurance and workers' compensation.

**Prevailing Rate of Total Compensation** – 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.

## How Much Do Home Care Agencies Have to Pay their Aides Under the State Worker Wage Parity Law?

The amounts are listed in the two following charts – one for NYC and the other for Westchester and Long Island.

### State Worker Wage Parity Requirements - NYC

| Date                                    | Requirement                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| March 1, 2014 and later                 | <p>Greater of: (i) the “prevailing rate of total compensation” as of January 1, 2011; or (ii) the “total compensation” mandated by NYC’s living wage law</p> <p>Interpreted by DOH to be: \$14.09 in “total compensation” consisting of a “base wage” of at least \$10 per hour, “additional wages” of up to \$1.69 per hour and “supplemental wages” of up to \$2.40 per hour</p> |
| March 1, 2013 through February 28, 2014 | 95% of the “total compensation” mandated by NYC’s living wage law: \$9.50 per hour if health benefits are provided or \$10.93 without health benefits                                                                                                                                                                                                                              |
| March 1, 2012 through February 28, 2013 | 90% of the “total compensation” mandated by NYC’s living wage law: \$9.00 per hour if health benefits are provided or \$10.35 without health benefits                                                                                                                                                                                                                              |

### Definitions for March 1, 2014 and later in NYC

**Total Compensation** may be satisfied entirely through wages, or through a combination of wages, additional wages and supplemental wages, with the following limitations:

The **Base Wage** is the minimum amount of the Total Compensation that must be paid directly to workers as regular hourly wages for all hours worked.

**Additional Wages** are the amount of the Total Compensation that employers may satisfy through additional payments directly to workers for hours not worked and for differentials and premiums other than overtime. Examples include paid leave (vacation, holiday, sick and personal days) and differentials or premiums for certain shifts (nights, weekends and holidays) or assignments (sleep-in or live-in work, care for multiple clients during the same shift). Additional Wages do **not** include overtime compensation required under Fair Labor Standards Act (FLSA) or state minimum wage orders or extra compensation creditable toward required overtime compensation for hours worked in excess of normal, regular or maximum daily or weekly hours.

**Supplemental Wages** are the maximum amount of Total Compensation that employers may satisfy indirectly, for example, by providing health insurance required by federal law.

### State Wage Parity Requirements - Westchester and Long Island

| Date                                    | Requirement                                                                                                                                                                                                                                                                 |
|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| March 1, 2013 through February 28, 2014 | 90% of the "total compensation" mandated by NYC's living wage law: \$9.00 per hour if health benefits are included or \$10.35 without health benefits                                                                                                                       |
| March 1, 2014 through February 28, 2015 | 95% of the "total compensation" mandated by NYC's living wage law: \$9.50 per hour if health benefits are included or \$10.93 without health benefits                                                                                                                       |
| March 1, 2015 through February 28, 2016 | 100% of the "total compensation" mandated by the NYC living wage law as set on March 1, 2015                                                                                                                                                                                |
| All periods on or after March 1, 2016   | Lesser of: (i) 115% of the "total compensation" mandated by NYC's living wage law as set on March 1 of each succeeding year; or (ii) the total compensation mandated by the living wage law of Nassau, Suffolk or Westchester, based on the location of the episode of care |

#### How Are Agencies to Document That They Are Complying with the State Worker Wage Parity Law?

Annually, CHHAs, LTHHCPs, and MCOs are required to submit forms to DOH certifying their compliance with the Home Care Worker Wage Parity provisions. The certification forms must include information on all collective bargaining agreements (CBAs) covering home care aides, including CBAs for contracted providers. The certification forms are at: [http://www.health.ny.gov/health\\_care/medicaid/redesign/2013-02-21\\_wage\\_parity\\_alert.htm](http://www.health.ny.gov/health_care/medicaid/redesign/2013-02-21_wage_parity_alert.htm). They must be submitted by March 1 of each year and cover the following year (ex. the forms due on March 1, 2013 cover the period March 1, 2013 through February 28, 2014). They should be emailed to: [HCWorkerParity@health.state.ny.us](mailto:HCWorkerParity@health.state.ny.us).

CHHAs, LTHHCPs and/or MCOs that contract with LHCSAs are required to obtain a written certification on a **quarterly** basis from the LHCSA or other entity which attests to the LHCSA's or other entity's compliance with the state's Home Care Worker Wage Parity Law for defined certification periods and on a prospective basis. For example, the form due December 1, 2013 covers the period December 1, 2013 through February 28, 2014 and is sent to the CHHA, LTHHCP and/or MCO, not DOH.

LHCSAs are also required to submit "all information necessary to verify compliance" to their contractor on a quarterly basis. DOH has verbally stated that the information to be included can be negotiated between the contractor and the LHCSA. All providers must maintain records of compliance for at least ten years.

## How Will the September 2013 Final Rule on the Federal Fair Labor Standards Act (FLSA) “Companionship Exemption” Affect Home Care Agencies in New York State?

The current “companionship exemption” exempts certain domestic employees, including home care paraprofessionals, from minimum wage and overtime requirements under the FLSA.

While the final rule eliminates the “companion exemption” for aides employed by agencies (see HCA’s *Guidebook to the Companionship Exemption*), New York already requires that aides be paid minimum wage and overtime and thus the effect of the final rule is that, starting January 1, 2015, agencies will have to pay overtime to their aides at time-and-a-half of the aide’s **regular** wage rate, rather than the current time-and-a-half of the minimum wage rate.

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## RESOURCES

Official Notice of Home Care Worker Wage Parity Minimum Rate of Total Compensation – NYC DOH Dear Administrator Letter (DAL), October 31, 2013  
[http://www.health.ny.gov/health\\_care/medicaid/redesign/docs/2013-10-31\\_wp\\_notice\\_re\\_nyc\\_comp.pdf](http://www.health.ny.gov/health_care/medicaid/redesign/docs/2013-10-31_wp_notice_re_nyc_comp.pdf)

Official Notice of Home Care Worker Wage Parity Minimum Rate of Total Compensation – Westchester and Long Island, DOH DAL, October 31, 2013  
[http://www.health.ny.gov/health\\_care/medicaid/redesign/docs/2013-10-31\\_wp\\_notice\\_re\\_westch.pdf](http://www.health.ny.gov/health_care/medicaid/redesign/docs/2013-10-31_wp_notice_re_westch.pdf)

Home Care Worker Wage Parity Reminder and Compliance Forms  
[http://www.health.ny.gov/health\\_care/medicaid/redesign/2013-02-21\\_wage\\_parity\\_alert.htm](http://www.health.ny.gov/health_care/medicaid/redesign/2013-02-21_wage_parity_alert.htm)

DOH Home Care Worker Wage Parity FAQs (February 2012)  
[http://www.health.ny.gov/health\\_care/medicaid/redesign/docs/2012-02-17\\_worker\\_parity\\_faqs.pdf](http://www.health.ny.gov/health_care/medicaid/redesign/docs/2012-02-17_worker_parity_faqs.pdf)

DOH Home Care Worker Wage Parity FAQs (January 2012)  
[http://www.health.ny.gov/facilities/long\\_term\\_care/2012-01-20\\_worker\\_parity\\_faqs.htm](http://www.health.ny.gov/facilities/long_term_care/2012-01-20_worker_parity_faqs.htm)

DOH DAL, Official Notice of Home Care Worker Wage Parity Minimum Rate of Total Compensation (October 28, 2011)  
[www.hca-nys.org/WageParityRatesDAL102811.pdf](http://www.hca-nys.org/WageParityRatesDAL102811.pdf)

DOH DAL, Home Care Worker Wage Parity FAQ (October 28, 2011)  
[www.hca-nys.org/WageParityFAQs102811.pdf](http://www.hca-nys.org/WageParityFAQs102811.pdf)

DOH DAL No. DHCBS 11-09, Home Care Worker Wage Parity (August 22, 2011)  
[www.hca-nys.org/WageParityDAL082211.pdf](http://www.hca-nys.org/WageParityDAL082211.pdf)



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