

NEW YORK LEGISLATURE PASSES SIGNIFICANT AMENDMENTS TO THE WAGE PARITY LAW

Hodgson Russ Home Care Alert
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On April 3, 2020, New York Governor Andrew Cuomo signed the 2020-21 state budget bills which include, among other things, material amendments to Section 3614-c of the New York Public Health Law, better known as the New York Home Care Worker Wage Parity Law (“Wage Parity Law”). The Wage Parity Law contains minimum compensation requirements for home health aides performing Medicaid-covered work in New York City and surrounding areas.

Key changes to the Wage Parity Law include the following:

Certain Arrangements Prohibited

The amendments add a new provision to the Wage Parity Law which would prohibit any “portion of the dollars spent or to be spent to satisfy the wage or benefit portion” to be returned to the CHHA, LHCSA, LTHHCP, MCP, or FI or “related persons or entities” other than the home care worker, whether “as a refund, dividend, profit, or in any other manner.” Home care agencies should immediately review their Wage Parity program offerings to comply with these requirements.

New Wage Parity Reporting Requirements

Under the amendments, LHCSAs, FIs, and other parties serving a CHHA, LTHHCP, or MCP contract will be required to provide an expanded annual certification, verified under oath, to the CHHA, LTHHCP, or MCP. This certification must include a “compliance statement of wage parity hours and expenses” on a form provided by the New York State Department of Labor (“NYSDOL”), along with “an independently-audited financial statement verifying such expenses.”

A LHCSA, FI, or other third party who knowingly signs a false verification is subject to criminal perjury penalties.

CHHAs, LTHHCPs, and MCPs are required to review and assess each annual compliance statement it receives and must make a written referral to NYSDOL “for any reasonably suspected failures” of the LHCSA, FI, or other third party to conform to the Wage Parity Law requirements.

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Wage Parity Information Required to be Included on WTPA Notices and Wage Statements

The amendments also require home care agencies to include Wage Parity information on a home care worker's Notice of Pay Rate and weekly wage statements under the Wage Theft Prevention Act (WTPA). Specifically, these documents must include the benefit portion under the Wage Parity Law, including "each type of... benefit provided."

Criminal and Contract Forfeiture Penalties for Wage Parity Violations

The law also adds criminal penalties for any CHHA, LHCSA, LTHHCP, MCP, FI, or other third party that "willfully pays less than such stipulated minimums regarding wages and supplements" under the Wage Parity Law.

Specifically, such violations will constitute a misdemeanor. A first violation is punishable by a \$500 fine, 30 days imprisonment, or both. A second violation is punishable by a \$1,000 fine and forfeiture of the contract on which the violation occurred and all payments under that contract.

If you have any questions regarding these amendments or how they affect your agency, please contact any of our Home Care Practice attorneys.

If you received this alert from a third party or from visiting our website and would like to be added to our Home Care Practice list or any other mailing list, please visit us at <https://forms.hodgsonruss.net/sign-up-for-email-and-other-communications..html>.