



Department of Health

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Governor

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Commissioner

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Executive Deputy Commissioner

June 14, 2017

**Subject: Home Care Worker Wage Parity Guidance to Consumer Directed
Personal Assistance Service (CDPAS) Fiscal Intermediaries (FI)**

Dear Administrator:

The purpose of this letter is to provide information and guidance on the recent addition to the Public Health Law of § 3614-c, Home Care Worker Wage Parity. This section established a minimum wage for home care aides who perform Medicaid reimbursed work for certified home health agencies (CHHAs), long term home health care programs (LTHHCPs) and managed care organizations (MCOs) within New York City and within the counties of Nassau, Suffolk and Westchester. MCOs include mainstream plans, as well as all forms of managed long term care plans. This section also affects licensed home care services agencies (LHCSAs), including limited licensed home care agencies (LLHCSAs), to the extent that they contract with a CHHA, LTHHCP or MCO to provide services to clients of those entities in the specified locations. Effective July 1, 2017, this section will apply to Consumer Directed Personal Assistance Service (CDPAS) Fiscal Intermediaries (FI) that have signed Administrative Agreements with MCOs.

On a quarterly basis, CDPAS FIs must provide the MCOs with the attached certification that the FI is in compliance with this provision. To help ensure compliance, MCOs should submit to the Department a list of all the FIs they have signed agreements with and an indication as to whether the FIs have completed a certification.

Failure to fully comply with the terms of the Home Care Worker Wage Parity requirements will result in non-payment of services rendered, as required by Public Health Law § 3614-c(2). Included in this notice is a document that further explains what is included in the rates for the upcoming Home Care Worker Wage Parity compliance period. If you have any questions regarding this information, please email to the following address:
HCWorkerParity@health.ny.gov.

Sincerely,

Andrew Segal, Director
Division of Long Term Care
Office of Health Insurance Programs

Enclosure

cc: Jason Helgerson
Jonathan Bick

Wage Parity 2017 Rates for CDPAS

New York City

For the period of July 1, 2017 through December 30, 2017, the minimum rate for home care aide total compensation (Total Compensation) will be \$15.09 and \$14.59 for large and small employers, respectively, in New York City.

This consists of a cash portion (Base Wage) of at least \$11.00 and \$10.50 per hour for large and small employers, respectively, and a benefit portion (Additional Wages and Supplemental Wages) of up to \$1.69 per hour for Additional Wages and up to \$2.40 per hour for Supplemental Wages.

Wages	Large Employer Per hour	Small Employer Per hour
Base Wage	\$11.00	\$10.50
Additional Wages	\$ 1.69	\$ 1.69
Supplemental Wages	\$ 2.40	\$ 2.40
Total Compensation	\$15.09	\$14.59
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Overtime	Per hour	
FLSA (<i>1½ times regular rate</i>) (<i>if regular rate equals Base Wage</i>)	\$16.50	\$15.75

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 in cash wages directly to the home care aide 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 home care aides 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 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. The Additional Wage portion can also be satisfied by increasing the Base Wage or Supplemental Wages by a corresponding amount.

Supplemental Wages are the amount of Total Compensation that employers may satisfy indirectly, for example, by providing education, pension benefits, or health insurance required by federal law. The Supplemental Wage portion can also be satisfied by increasing the Base Wage by a corresponding amount.

Overtime is required at 1½ times the regular rate of compensation under the Fair Labor

Standards Act (FLSA) as well as under the New York State Labor Law's provisions for minimum wage and for domestic workers. The exceptions to this general rule that applied to most employers of home care aides and to certain non-profits prior to 2015 no longer apply to third party employers, such as home care agencies, as a result of FLSA overtime Home Care Final Rule issued on October 1, 2013, amending 29 C.F.R. § 552 at 3, 6, 102, 109 and 110. For more information visit www.dol.gov/whd/homecare.

Wage Parity 2017 Rates for CDPAS

Nassau, Suffolk and Westchester Counties

For the period of July 1, 2017 through December 30, 2017, the minimum rate for home care aide total compensation (Total Compensation) will be \$13.22 per hour.

This consists of a cash portion (Base Wage) of at least \$10.00 per hour and a benefit portion (Supplemental Wages) of up to \$3.22 per hour.

Wages	Per hour
Base Wage	\$10.00
Supplemental Wages	\$ 3.22
Total Compensation	\$13.22

Overtime	Per hour
FLSA (<i>1½ times regular rate</i>) (<i>if regular rate equals Base Wage</i>)	\$15.00

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

The Base Wage is the minimum amount of the Total Compensation that must be paid in cash wages directly to the home care aide as regular hourly wages for all hours worked.

Supplemental Wages are the amount of Total Compensation that employers may satisfy indirectly, for example, by providing education, pension benefits, or health insurance required by federal law. The Supplemental Compensation portion of Total Compensation can be satisfied by increasing the Base Wage rate by a corresponding amount.

Overtime is required at 1½ times the regular rate of compensation under the Fair Labor Standards Act (FLSA) as well as under the New York State Labor Law's provisions for minimum wage and for domestic workers. The exceptions to this general rule that applied to most employers of home care aides and to certain non-profits prior to 2015 no longer apply to third party employers, such as home care agencies, as a result of FLSA overtime Home Care Final Rules issued on October 31, 2013, amending 29 C.F.R. § 552 at 3, 6, 102 and 110. For more information visit www.dol.gov/whd/homecare.

Notice Regarding Overtime Pay under Wage Parity

This notice is provided to clarify the extent to which overtime pay can be used to satisfy the Total Compensation requirements of the Wage Parity Law. While overtime pay can be used to satisfy the Total Compensation requirement for a given hour of overtime, it cannot be used more generally to also satisfy the Total Compensation requirement for non-overtime hours. Thus, for example, if a home care aide's regular rate is \$11 and they are paid \$16.50 for an hour of overtime, payment of that \$16.50 for that hour can be used to satisfy the Total Compensation rate for that hour. In that example, if the Total Compensation rate is \$15.09, then the requirement to pay or provide \$15.09 is fully satisfied by payment of \$16.50, for that same hour of overtime. By contrast, however, no part of the \$16.50 paid for a given hour of overtime can be used to satisfy the Total Compensation rate for all hours, generally, or for non-overtime hours, specifically.

To the extent that FAQ number 7 from May 2014 can be read to say that overtime paid during a given hour of overtime work cannot be used to satisfy the Total Compensation requirement for that hour, FAQ number 7 is superseded by this notice.