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New York State's Budget Amends the NY Home Care Worker Wage Parity Law

Earlier this year, New York Governor Andrew Cuomo signed the 2020-21 state budget bills (2020-2021 Budget), which includes amendments to the New York Home Care Worker Wage Parity Law (Wage Parity Law). The Wage Parity Law establishes minimum compensation requirements for home healthcare aides performing Medicaid-covered work in New York City and Nassau, Suffolk and Westchester counties.

The amendments:

1. Prohibit using benefit programs that refund dollars to the employer as supplemental wages;
2. Add certain annual compliance certification requirements;
3. Require additional information on Wage Theft Protection Act (WTPA) notices and wage statements; and
4. Add new penalties for willful violations.

Change Effective Immediately

Certain Distributions of Funds are Prohibited

The 2020-2021 Budget amends the Wage Parity Law to prohibit any portion of the dollars spent or to be spent to satisfy the wage or benefit portion to be returned as a refund, dividend, profit or in any other manner to the certified home health agency (CHHA), licensed home care services agency (LHCSA), long term home health care program (LTHHCP), managed care plan (MCP) or fiscal intermediary (FI), related persons or entities, other than to a home care aide as defined in this section to whom the wage or benefits are due.

The Bottom Line

The 2020-21 New York state budget bills include significant amendments to the New York Home Care Worker Wage Parity Law, including new rules regarding distributions, certifications and WTPA notices and wage statements, as well as new enforcement provisions for failures to comply with these rules.

Home care agencies should review their wage parity program offerings and update them as necessary to comply with these requirements.

Changes Effective October 1, 2020

Expanded Annual Certification

The 2020-2021 Budget provides that if a CHHA, LTHHCP or MCP elects to provide home care aide services through contracts with an LHCSA, FI or through other third parties, any of these contracts must include an expanded annual certification to the CHHA, LTHHCP or MCP. This expanded certification must be verified under oath and must include an annual compliance statement of wage parity hours and expenses on a form provided by the New York State Department of Labor (NYDOL), accompanied by an independently-audited financial statement verifying such expenses. A LHCSA, FI or other third party who knowingly signs a false certification shall be charged with perjury under the New York penal code.

Additionally, the CHHA, LTHHCP or MCP must review and assess annual compliance statements and make a written referral to the NYDOL of any reasonably suspected failures of LHCSAs, FIs or other third parties to comply with the Wage Parity Law.

Updates to WTPA Notices and Wage Statements

Home care agencies are now required to include wage parity information on a home care worker's notice of pay rate and weekly wage statements under the WTPA. Specifically, these documents must state the benefit portion of the minimum rate of the home care aide's total compensation, to the extent that benefits are used to satisfy the total compensation requirement.

Penalties for Wage Parity Law Violations

The 2020-2021 Budget adds that any CHHA, LHCSA, LTHHCP, MCP, FI or other third party that willfully pays less than the stipulated minimums regarding wages and supplements required under the Wage Parity Law will be guilty of a misdemeanor and upon conviction will be subject to the following penalties and fines:

- >> First offense — Fine of \$500; imprisonment for not more than 30 days; or both.
- >> Second offense — Fine of \$1,000, and the contract on which the violation occurred will be forfeited and all payments under that contract.



For More Information

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