

STATE OF NEW YORK

3189

2023-2024 Regular Sessions

IN SENATE

January 30, 2023

Introduced by Sens. MAY, ADDABBO, BAILEY, BRESLIN, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, FELDER, FERNANDEZ, GIANARIS, GONZALEZ, GOUNARDES, HARCKHAM, HELMING, HINCHEY, HOYLMAN-SIGAL, JACKSON, KAVANAGH, KENNEDY, LIU, MANNION, MAYER, MYRIE, OBERACKER, PALUMBO, PARKER, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY, TEDISCO, THOMAS, WEIK -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to enacting the "fair pay for home care act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "fair pay
2 for home care act".

3 § 2. Subdivision 2 of section 3614-f of the public health law, as
4 added by section 1 of part XX of chapter 56 of the laws of 2022, is
5 amended to read as follows:

6 2. [~~In addition to the otherwise applicable minimum wage under section~~
7 ~~six hundred fifty-two of the labor law, or any otherwise applicable wage~~
8 ~~rule or order under article nineteen of the labor law]~~ Beginning January
9 first, two thousand twenty-four, the minimum wage for a home care aide

10 shall be [~~increased by an amount of three dollars and zero cents in~~
11 ~~accordance with the following schedule:~~

12 ~~(a) beginning October first, two thousand twenty-two, the minimum wage~~
13 ~~for a home care aide shall be increased by an amount of two dollars and~~
14 ~~zero cents, and~~

15 ~~(b) beginning October first, two thousand twenty-three, the minimum~~
16 ~~wage for a home care aide shall be increased by an additional amount of~~
17 ~~one dollar and zero cents]~~ no less than one hundred fifty percent of the
18 otherwise applicable statewide minimum wage or applicable regional mini-
19 imum wage pursuant to section six hundred fifty-two of the labor law.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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§ 3. Section 3614-f of the public health law is amended by adding six new subdivisions 4, 5, 6, 7, 8 and 9 to read as follows:

4. (a) The commissioner shall establish a regional minimum hourly base reimbursement rate for all providers employing workers subject to the minimum wage provisions established in subdivision two of this section. The regional minimum hourly base reimbursement rate shall be based on regions established by the commissioner, provided that for areas subject to section thirty-six hundred fourteen-c of this article, each area with a different prevailing rate of total compensation, as defined in such section, shall be its own region.

(b) For the purposes of this section, "regional minimum hourly base reimbursement rate" means a reimbursement rate that reflects the average combined costs associated with the provision of direct service inclusive of, but not limited to:

- (i) overtime costs;
- (ii) transportation costs;
- (iii) all benefits;
- (iv) all payroll taxes, including but not limited to the federal insurance contributions act, medicare, the federal unemployment tax act, state unemployment insurance, disability insurance, workers' compensation, and the metropolitan transportation authority tax;
- (v) related increases tied to base wages such as compression;
- (vi) reasonable administrative costs as defined by the commissioner;
- (vii) allowances for capital costs;
- (viii) the development of profit or reserves as allowable by law or regulations of the commissioner; and
- (ix) any additional supplemental payments.

5. (a) The initial regional minimum hourly base reimbursement rate shall be no less than the following:

(i) thirty-eight dollars and fifty cents per hour in the wage parity region, encompassing all counties subject to section thirty-six hundred fourteen of this article; and

(ii) thirty-eight dollars and eighteen cents per hour for the counties in the remainder of the state.

(b) For consumer directed personal assistance services provided under section three hundred sixty-five-f of the social services law, the initial regional minimum hourly base reimbursement rate shall reflect the rates established in paragraph (a) of this subdivision, provided that the commissioner may reduce such rates by no more than twelve and nine-tenths percent. In the event that such reduction occurs, a per member, per month increase reflective of actual administrative and general costs, adjusted to reflect regional differences as regions are defined in this section, shall be made to fiscal intermediaries administering such programs. If the department or a managed care organization chooses not to utilize the per member, per month payment established pursuant to this paragraph, the regional minimum hourly base reimbursement rate for such region, as defined in paragraph (a) of this subdivision, shall apply.

(c) Following the initial established regional minimum hourly base reimbursement rate established under this section, the commissioner shall annually adjust the regional minimum hourly base reimbursement rate for each region by a trend factor to reflect and accommodate any additional labor law increases, changes or mandates. Updated rates shall be made publicly available the first day of each October thereafter for use on the first day of January of the following year.

1 6. (a) No payment made to a provider who employs home care aides
2 subject to this section that is less than the regional minimum hourly
3 base reimbursement rate established pursuant to subdivision four of this
4 section for services provided under authorization by a local department
5 of social services, a managed care provider under section three hundred
6 sixty-four-j of the social services law, or a managed long-term care
7 provider under section forty-four hundred three-f of this chapter shall
8 be deemed adequate.

9 (b) The commissioner shall submit any and all necessary applications
10 for approvals and/or waivers to the federal centers for medicare and
11 medicaid services to secure approval to establish regional minimum hour-
12 ly base reimbursement rates and make state-directed payments to provid-
13 ers for the purposes of supporting wage increases.

14 (i) If approved, directed payments shall be made to such providers of
15 medicaid services through contracts with managed care organizations
16 where applicable, provided that the commissioner ensures that such
17 directed payments are in accordance with the terms of this section.

18 (ii) If the state directed payment is not approved, the department
19 shall require plans to justify deviations apart from the regional mini-
20 imum hourly base reimbursement rates.

21 (c) The commissioner shall ensure that managed care capitation is
22 adjusted to ensure rate adequacy for the managed care organizations in
23 order to comply with this section.

24 7. Nothing in this section shall preclude providers employing home
25 care aides covered under this section or payers from paying or contract-
26 ing for services at rates higher than the regional minimum hourly base
27 reimbursement rate if the parties agree to such terms.

28 8. The commissioner shall publish and post regional minimum hourly
29 base reimbursement rates annually and shall take all necessary steps to
30 advise commercial and government programs payers of home care services
31 of the regional minimum hourly base reimbursement rates and require
32 other state authorized payers to reimburse providers of home care
33 services at the regional minimum hourly base reimbursement rate.

34 9. For years in which rate adjustments to the regional minimum hourly
35 base reimbursement rate have not been calculated prior to the start of
36 the calendar year, the previous year's rate shall remain in place until
37 the new rate is calculated, plus the annual average consumer price
38 index-urban or consumer price index-rural, as applicable. If it is
39 determined that retroactive rate adjustments are necessary, payment
40 adjustments will be made as a direct pass through to providers within
41 sixty days of the adjusted rate.

42 § 4. Subparagraph (v) of paragraph (a) of subdivision 3 of section
43 3614-c of the public health law, as added by section 3 of part XX of
44 chapter 56 of the laws of 2022, is amended and a new subparagraph (vi)
45 is added to read as follows:

46 (v) for all periods on or after January first, two thousand twenty-
47 three, the cash portion of the minimum rate of home care aide total
48 compensation shall be the minimum wage for home care aides in the appli-
49 cable region, as defined in section thirty-six hundred fourteen-f of
50 this article. The benefit portion of the minimum rate of home care aide
51 total compensation shall be four dollars and nine cents[+];

52 (vi) for all periods on or after January first, two thousand twenty-
53 four, the cash portion of the minimum rate of home care aide total
54 compensation shall be the minimum wage for home care aides in the appli-
55 cable region, as defined in section thirty-six hundred fourteen-f of

1 this article. The benefit portion of the minimum rate of home care aide
2 total compensation shall be four dollars and eighty-four cents.

3 § 5 Subparagraph (v) of paragraph (b) of subdivision 3 of section
4 3614-c of the public health law, as added by section 4 of part XX of
5 chapter 56 of the laws of 2022, is amended and a new subparagraph (vi)
6 is added to read as follows:

7 (v) for all periods on or after January first, two thousand twenty-
8 three, the cash portion of the minimum rate of home care aide total
9 compensation shall be the minimum wage for the applicable region, as
10 defined in section thirty-six hundred fourteen-f of this article. The
11 benefit portion of the minimum rate of home care aide total compensation
12 shall be three dollars and twenty-two cents[-];

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

19 § 6. To ensure compliance with this minimum wage increase, the comp-
20 troller shall have the authority to review the contracts entered into
21 between a managed care organization and a licensed home care services
22 agency, fiscal intermediary, or any agency subject to the provisions of
23 section 3614-f of the public health law to ensure that rates being
24 offered are adequate and meet the department of health's actuarial stan-
25 dards. The comptroller, in consultation with the medicaid fraud control
26 unit, may develop and promulgate a process to ensure such audits comply
27 with state and federal law to protect proprietary information and
28 contracts. In the event that the comptroller finds evidence that managed
29 care organizations are not paying sufficient adequate rates, they will
30 refer such instances to the department of health and the medicaid fraud
31 control unit for enforcement. If the department of health or the medi-
32 caid fraud control unit chooses not to pursue action related to this
33 referral, it shall inform, in writing, the comptroller's office as to
34 the reasoning. Such reports, and the department of health's responses,
35 shall be public information and made available on the comptroller's
36 website. For the purposes of this section, the term "managed care organ-
37 ization" shall mean an entity operating pursuant to section 364-j of the
38 social services law or article 44 of the public health law.

39 § 7. Severability. If any provision of this act, or any application
40 of any provision of this act, is held to be invalid, or to violate or be
41 inconsistent with any federal law or regulation, that shall not affect
42 the validity or effectiveness of any other provision of this act, or any
43 other application of any provision of this act which can be given effect
44 without that provision or application; and to that end, the provisions
45 and applications of this act are severable.

46 § 8. This act shall take effect immediately; provided, however, that
47 section two of this act shall take effect January 1, 2024.