S T A T E O F N E W Y O R K

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I N A S S E M B L Y

April 1, 2016

Introduced by M. of A. HEASTIE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the public health law, in relation to home care worker wage parity

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 3614-c of the public health law, as added by section 33 of part H of chapter 59 of the laws of 2011, is amended to read as follows:

S 3614-c. Home care worker wage parity. 1. As used in this section, the following terms shall have the following meaning:

(a) "Living wage law" means any law enacted by Nassau, Suffolk or Westchester county or a city with a population of one million or more which establishes a minimum wage for some or all employees who perform work on contracts with such county or city.

(b) "Total compensation" means 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 employer portion of payments for statutory benefits, including but not limited to FICA, disability insurance, unemployment insurance and workers' compensation.

(c) "Prevailing rate of total compensation" means 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.

(d) "Home care aide" means a home health aide, personal care aide, home attendant or other licensed or unlicensed person whose primary responsibility includes the provision of in-home assistance with activities of daily living, instrumental activities of daily living or

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

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health-related tasks; provided, however, that home care aide does not include any individual (i) working on a casual basis, or (ii) who is a relative through blood, marriage or adoption of: (1) the employer; or (2) the person for whom the worker is delivering services, under a program funded or administered by federal, state or local government.

(e) "Managed care plan" means any managed care program, organization or demonstration covering personal care or home health aide services, and which receives premiums funded, in whole or in part, by the New York state medical assistance program, including but not limited to all Medicaid managed care, Medicaid managed long term care, Medicaid advantage, and Medicaid advantage plus plans and all programs of all-inclusive care for the elderly.

(f) "Episode of care" means any service unit reimbursed, in whole or in part, by the New York state medical assistance program, whether through direct reimbursement or covered by a premium payment, and which covers, in whole or in part, any service provided by a home care aide, including but not limited to all service units defined as visits, hours, days, months or episodes.

(G) "CASH PORTION OF THE MINIMUM RATE OF HOME CARE AID TOTAL COMPENSATION" MEANS THE MINIMUM AMOUNT OF HOME CARE AIDE TOTAL COMPENSATION THAT MAY BE PAID IN CASH WAGES, AS DETERMINED BY THE DEPARTMENT IN CONSULTATION WITH THE DEPARTMENT OF LABOR.

(H) "BENEFIT PORTION OF THE MINIMUM RATE OF HOME CARE AIDE TOTAL COMPENSATION" MEANS THE PORTION OF HOME CARE AIDE TOTAL COMPENSATION THAT MAY BE PAID IN CASH OR HEALTH, EDUCATION OR PENSION BENEFITS, WAGE DIFFERENTIALS, SUPPLEMENTS IN LIEU OF BENEFITS AND COMPENSATED TIME OFF, AS DETERMINED BY THE DEPARTMENT IN CONSULTATION WITH THE DEPARTMENT OF LABOR. CASH WAGES PAID PURSUANT TO INCREASES IN THE STATE OR FEDERAL MINIMUM WAGE CANNOT BE USED TO SATISFY THE BENEFIT PORTION OF THE MINIMUM RATE OF HOME CARE AIDE TOTAL COMPENSATION.

2. Notwithstanding any inconsistent provision of law, rule or regulation, no payments by government agencies shall be made to certified home health agencies, long term home health care programs or managed care plans for any episode of care furnished, in whole or in part, by any home care aide who is compensated at amounts less than the applicable minimum rate of home care aide total compensation established pursuant to this section.

3. (a) The minimum rate of home care aide total compensation in a city with a population of one million or more shall be:

(i) for the period March first, two thousand twelve through February twenty-eighth, two thousand thirteen, ninety percent of the total compensation mandated by the living wage law of such city;

(ii) for the period March first, two thousand thirteen through February twenty-eighth, two thousand fourteen, ninety-five percent of the total compensation mandated by the living wage law of such city;

(iii) for [all periods on and after] THE PERIOD March first, two thousand fourteen THROUGH MARCH THIRTY-FIRST TWO THOUSAND SIXTEEN, no less than the prevailing rate of total compensation as of January first, two thousand eleven, or the total compensation mandated by the living wage law of such city, whichever is greater;

(IV) FOR ALL PERIODS ON OR AFTER APRIL FIRST, TWO THOUSAND SIXTEEN, THE CASH PORTION OF THE MINIMUM RATE OF HOME CARE AIDE TOTAL COMPENSATION SHALL BE TEN DOLLARS OR THE MINIMUM WAGE AS LAID OUT IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION SIX HUNDRED FIFTY-TWO OF THE LABOR LAW, WHICHEVER IS HIGHER. THE BENEFIT PORTION OF THE MINIMUM RATE OF HOME CARE AIDE TOTAL COMPENSATION SHALL BE FOUR DOLLARS AND NINE CENTS.

(b) The minimum rate of home care aide total compensation in the counties of Nassau, Suffolk and Westchester shall be:

(i) for the period March first, two thousand thirteen through February twenty-eighth, two thousand fourteen, ninety percent of the total compensation mandated by the living wage law as set on March first, two thousand thirteen of a city with a population of a million or more;

(ii) for the period March first, two thousand fourteen through February twenty-eighth, two thousand fifteen, ninety-five percent of the total compensation mandated by the living wage law as set on March first, two thousand fourteen of a city with a population of a million or more;

(iii) for the period March first, two thousand fifteen, through February twenty-eighth, two thousand sixteen, one hundred percent of the total compensation mandated by the living wage law as set on March first, two thousand fifteen of a city with a population of a million or more;

(iv) for all periods on or after March first, two thousand sixteen, [the lesser of (i) one hundred and fifteen percent of the total compensation mandated by the living wage law as set on March first of each succeeding year of a city with a population of one million or more or; (ii) the total compensation mandated by the living wage law of Nassau, Suffolk or Westchester county, based on the location of the episode of care] THE CASH PORTION OF THE MINIMUM RATE OF HOME CARE AIDE TOTAL COMPENSATION SHALL BE TEN DOLLARS OR THE MINIMUM WAGE AS LAID OUT IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION SIX HUNDRED FIFTY-TWO OF THE LABOR LAW, WHICHEVER IS HIGHER. THE BENEFIT PORTION OF THE MINIMUM RATE OF HOME CARE AIDE TOTAL COMPENSATION SHALL BE THREE DOLLARS AND TWENTY-TWO CENTS.

4. [Any portion of the minimum rate of home care aide total compensation attributable to health benefit costs or payments in lieu of health benefits, and paid time off, as established pursuant to subdivision three of this section shall be superseded by the terms of any employer bona fide collective bargaining agreement in effect as of January first, two thousand eleven, or a successor to such agreement, which provides for home care aides' health benefits through payments to jointly administered labor-management funds.

5.] The terms of this section shall apply equally to services provided by home care aides who work on episodes of care as direct employees of certified home health agencies, long term home health care programs, or managed care plans, or as employees of licensed home care services agencies, limited licensed home care services agencies, or under any other arrangement.

[6.] 5. No payments by government agencies shall be made to certified home health agencies, long term home health care programs, or managed care plans for any episode of care without the certified home health agency, long term home health care program, or managed care plan having delivered prior written certification to the commissioner, on forms prepared by the department in consultation with the department of labor, that all services provided under each episode of care are in full compliance with the terms of this section and any regulations promulgated pursuant to this section.

[7.] 6. If a certified home health agency or long term home health care program elects to provide home care aide services through contracts with licensed home care services agencies or through other third parties, provided that the episode of care on which the home care aide works is covered under the terms of this section, the certified home

health agency, long term home health care program, or managed care plan must obtain a written certification from the licensed home care services agency or other third party, on forms prepared by the department in consultation with the department of labor, which attests to the licensed home care services agency's or other third party's compliance with the terms of this section. Such certifications shall also obligate the certified home health agency, long term home health care program, or managed care plan to obtain, on no less than a quarterly basis, all information from the licensed home care services agency or other third parties necessary to verify compliance with the terms of this section. Such certifications and the information exchanged pursuant to them shall be retained by all certified home health agencies, long term home health care programs, or managed care plans, and all licensed home care services agencies, or other third parties for a period of no less than ten years, and made available to the department upon request.

[8.] 7. The commissioner shall distribute to all certified home health agencies, long term home health care programs, and managed care plans official notice of the minimum rates of home care aide compensation at least one hundred twenty days prior to the effective date of each minimum rate for each social services district covered by the terms of this section.

[9.] 8. The commissioner is authorized to promulgate regulations, and may promulgate emergency regulations, to implement the provisions of this section.

[10.] 9. Nothing in this section should be construed as applicable to any service provided by certified home health agencies, long term home health care programs, or managed care plans except for all episodes of care reimbursed in whole or in part by the New York Medicaid program.

[11.] 10. No certified home health agency, managed care plan or long term home health care program shall be liable for recoupment of payments for services provided through a licensed home care services agency or other third party with which the certified home health agency, long term home health care program, or managed care plan has a contract because the licensed agency or other third party failed to comply with the provisions of this section if the certified home health agency, long term home health care program, or managed care plan has reasonably and in good faith collected certifications and all information required pursuant to subdivisions [six and seven] FIVE AND SIX of this section.

S 2. This act shall take effect on the same date as part K of a chapter of the laws of 2016 amending the labor law relating to the rate of minimum wage, as proposed in legislative bill numbers S.6406-C and A.9006-C, takes effect.