STATE OF NEW YORK

8821

IN ASSEMBLY

January 18, 2024

Introduced by M. of A. PAULIN -- read once and referred 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:

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

§ 2. Subdivision 2 of section 3614-f of the public health law, as amended by section 3 of part NN of chapter 57 of the laws of 2023, is amended to read as follows:

2. (a) Beginning October first, two thousand twenty-two, in addition to the otherwise applicable minimum wage under section six hundred fifty-two of the labor law, or any otherwise applicable wage rule or order under article nineteen of the labor law, the minimum wage for a home care aide shall be increased by an amount of two dollars and zero cents.

(b) [~~for~~] **For** the period January first, two thousand twenty-four through December thirty-first, two thousand twenty-four, the minimum wage for a home care aide shall be as follows:

(i) for each hour worked in downstate, eighteen dollars and fifty-five cents; and

(ii) for each hour worked in remainder of state, seventeen dollars and fifty-five cents;

(c) [~~for~~] **For** the period January first, two thousand twenty-five through [~~December thirty-first~~] **April first**, two thousand twenty-five, the minimum wage for a home care aide shall be as follows:

(i) for each hour worked in downstate, nineteen dollars and ten cents; and

(ii) for each hour worked in remainder of state, eighteen dollars and ten cents;

(d) [~~for~~] **For** the period [~~January first, two thousand twenty-six through December thirty-first, two thousand twenty-six, the minimum wage for a home care aide shall be as follows:~~

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

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~~(i) for each hour worked in downstate, nineteen dollars and sixty-five cents; and~~

~~(ii) for each hour worked in remainder of state, eighteen dollars and sixty-five cents;~~

~~(e) beginning January first, two thousand twenty-seven, and each January first thereafter, the minimum wage for a home care aide shall be the sum of the minimum wage for a home care aide from the prior calendar year and the home care worker wage adjustment.~~

~~(f) (i) Notwithstanding any provision of law to the contrary, in no event shall the minimum wage for a home care aide in downstate exceed the sum of the wage set by the commissioner of labor pursuant to paragraph (a) of subdivision one-b of section six hundred fifty-two of the labor law plus three dollars and zero cents.~~

~~(ii) Notwithstanding any provision of law to the contrary, in no event shall the minimum wage for a home care aide in remainder of state exceed the sum of the wage set by the commissioner of labor pursuant to paragraph (b) of subdivision one-b of section six hundred fifty-two of the labor law plus three dollars and zero cents~~] **on and after April second, two thousand twenty-five, the minimum wage for a home care aide shall be no less than one hundred fifty percent of the applicable statewide minimum wage or applicable regional minimum wage pursuant to section six hundred fifty-two of the labor law**.

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

5. (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.

(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.

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

(b) The commissioner shall submit any and all necessary applications for approvals and/or waivers to the federal centers for medicare and medicaid services to secure approval to establish regional minimum hourly base reimbursement rates and make state-directed payments to providers for the purposes of supporting wage increases.

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

(ii) If the state directed payment is not approved, the department shall require plans to justify deviations apart from the regional minimum hourly base reimbursement rates.

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

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

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

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

§ 4. To ensure compliance with this minimum wage increase, the comptroller shall have the authority to review the contracts entered into between a managed care organization and a licensed home care services agency, fiscal intermediary, or any agency subject to the provisions of section 3614-f of the public health law to ensure that rates being offered are adequate and meet the department of health's actuarial standards. The comptroller, in consultation with the medicaid fraud control unit, may develop and promulgate a process to ensure such audits comply with state and federal law to protect proprietary information and contracts. In the event that the comptroller finds evidence that managed care organizations are not paying sufficient adequate rates, they will refer such instances to the department of health and the medicaid fraud control unit for enforcement. If the department of health or the medicaid fraud control unit chooses not to pursue action related to this referral, it shall inform, in writing, the comptroller's office as to

the reasoning. Such reports, and the department of health's responses, shall be public information and made available on the comptroller's website. For the purposes of this section, the term "managed care organization" shall mean an entity operating pursuant to section 364-j of the social services law or article 44 of the public health law.

§ 5. 1. The commissioners of the departments of taxation and finance, health and labor, in consultation with the office of temporary and disability assistance, shall undertake a study regarding the use of an expanded state earned income tax credit as a strategy to improve the home care aide workforce. Such study shall include an evaluation of issues, including but not limited to:

a. the range of increase needed to increase total compensation to the median compensation by county and/or region;

b. implementation challenges related to a specific sector enhanced earned income credit;

c. possible effects on worker recruitment and retention;

d. fiscal impact on the state; and

e. any other issues as determined by the commissioners and departments.

2. The study shall include a public hearing and/or other processes to gather information from all interested parties. The commissioner of taxation and finance shall report the findings of the study no later than nine months after the effective date of this act or December 31, 2024, whichever is sooner.

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

§ 7. This act shall take effect immediately; provided, however, that section two of this act shall take effect January 1, 2025.