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:

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 added by section 1 of part XX of chapter 56 of the laws of 2022, is amended to read as follows:

2. [~~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~~] **Beginning January first, two thousand twenty-four**, the minimum wage for a home care aide shall be [~~increased by an amount of three dollars and zero cents in accordance with the following schedule:~~

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

~~(b) beginning October first, two thousand twenty-three, the minimum wage for a home care aide shall be increased by an additional amount of one dollar and zero cents~~] **no less than one hundred fifty percent of the otherwise applicable statewide minimum wage or applicable regional minimum 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.

LBD01890-04-3

§ 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.

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

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

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

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

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

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

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

§ 6. 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.

§ 7. 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.

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