

The Home Care Worker Wage Parity Law, Dissected

By Emina Poricanin

Home health providers in New York City and Nassau, Westchester and Suffolk Counties must comply with the new Home Care Worker Wage Parity Law. Codified in New York Public Health Law § 3614-c, the Wage Parity Law establishes a “minimum wage rate” for home care aides providing Medicaid-reimbursed services on behalf of certified home health agencies, long-term home health care programs, and managed care plans. In addition to the minimum wage rate requirements, the Wage Parity Law obligates covered entities to provide home care aides with “health benefits” or a wage supplement in lieu of benefits.

The Wage Parity Law will, in most cases, increase the hourly wages that must be paid to home care aides, though no corresponding increase in Medicaid reimbursement rates for the covered providers has been approved. The end result is that the Wage Parity Law will increase the cost of doing business for covered providers.

This article summarizes the critical aspects of the Wage Parity Law to ensure that covered entities understand their compliance requirements.

Overview

The Wage Parity Law was the result of Governor Cuomo’s Medicaid Redesign initiative and was enacted as part of the 2011-12 New York State budget. According to the proponents of the law, it is designed to address “inconsistency in wages among home care workers” and improve recruitment and retention of home care aides, thereby improving the quality of care for Medicaid service recipients. It is anticipated that 60,000 home care aides will be affected by the Wage Parity Law.

To Whom Does the Law Apply?

The Wage Parity Law applies to “home care aides” employed by home care agencies operating in New York City and, beginning on March 1, 2013, aides working in covered entities in Nassau, Suffolk, and Westchester counties. The law defines “home care aides” as home health aides, personal care aides, home attendants, or other licensed or unlicensed workers whose primary duties include the provision of in-home assistance with activities of daily living. Excluded from the definition of “home care aides” are any aides working on a casual basis or those who are “relatives” of the employer or the person for whom the worker is delivering services under a program funded or administered by the federal, state, or local government.

Additionally, the Wage Parity Law only applies to home care aides working for certified home health agencies (CHHAs), long-term home health care programs (LTHHCPs), managed care plans (MCPs), and any subcontractors of a CHHA, LTHHCP, or MCP. So, for example, aides providing Medicaid reimbursed hospice, nursing home transition and diversion or traumatic brain injury services are protected by the Wage Parity Law if the services are provided pursuant to a contract with a CHHA, LTHHCP, or MCP. Assisted living programs, however, are not affected by the Wage Parity Law.

Lastly, the Wage Parity Law applies to home care aides rendering episodes of care reimbursed in whole or in part by Medicaid.

What Are the Requirements of the Wage Parity Law?

The Wage Parity Law establishes a “minimum wage rate” for home care aides and requires covered entities to provide aides with a health benefit, or pay aides a wage supplement in lieu of a health benefit. Thus, to ensure compliance, covered entities must pay a specific minimum hourly wage and provide a health benefit valued in accordance with the Wage Parity Law, or a higher hourly wage to account for lack of health benefits.

The Wage Parity Law will be implemented in phases over the next several years, with each year bringing an increase in the hourly rate that must be paid to home care aides. The minimum hourly wage rates are based upon the living wage law of New York City, which establishes the minimum hourly wages for different industries. From March 1, 2012 through February 28, 2013, home care aides in New York City must be paid 90% of “total compensation” mandated by the living wage law of New York City, which equates to a \$9.00 minimum hourly wage rate. Starting on March 1, 2014, home care aides in New York City must be paid no less than the prevailing rate of compensation, or the total compensation, mandated by the living wage law of New York City, whichever is greater.

The Wage Parity Law will take effect on March 1, 2013 in Nassau, Suffolk, and Westchester counties. Just as in New York City, the minimum hourly wage rates for home care aide services will be based upon the rates established by the New York City living wage law.

The “minimum hourly rate” established by the Wage Parity Law must be paid to aides for all hours worked. Aides working on a part-time basis are covered by the

law. New employees, who may be in their probationary period, are likewise immediately entitled to the benefits of the Wage Parity Law. Aides working on a “casual basis,” however, are not covered by the Wage Parity Law. The Department of Health has noted that an aide works on a “casual basis” if he or she works on an incidental, irregular, and/or intermittent basis.

The Wage Parity Law also requires covered entities to provide home care aides with health benefits, or a wage supplement in lieu of a health benefit. Specifically, by reference to the New York City living wage law, which states that covered employers must pay covered employees “no less than the living wage and must either provide employees with health benefits or supplement their hourly wage rate by an amount no less than the health benefits supplement rate,” the Wage Parity Law establishes the requirement for provision of health benefits or a wage supplement in lieu of those benefits.

The value of the health benefit that covered entities must provide under the Wage Parity Law is also derived from the living wage law of New York City. While the New York City living wage law presently requires covered employers to provide health benefits, or a wage supplement in lieu of a benefit, that is equivalent to \$1.50 per hour, entities affected by the Wage Parity Law must provide a benefit that is valued at \$1.35 per hour, or 90% of the benefit under the New York City living wage law.

Covered entities that choose to provide health benefits to aides instead of wage supplements must ensure that the health benefits are valued in accordance with the Wage Parity Law. If the benefit supplement rate is \$1.35 per hour, for example, covered entities must ensure that they provide health benefits to aides that are valued at \$1.35 per hour, for each hour the aide actually works. If the value of the health benefits that are provided to aides is less than \$1.35 per hour, the covered entity must pay to the aide, in cash, any difference between the actual value of the benefit and the benefit supplement rate established by the Wage Parity Law. Ultimately, the covered entity must expend at least \$1.35 for benefits, or pay a wage supplement in lieu of a benefit, for each hour the employee works.

To illustrate, if a covered entity in New York City, in 2012, contributes \$1.00 towards qualifying health benefits for every hour that a covered aide works, and the entity is required to provide a health benefit valued at \$1.35 per hour, the covered entity will be required to pay to the employee 35 cents for each hour worked, which is the difference between the value of the health benefit actually provided and the health benefit value required to be provided. Ultimately, the aide should be paid \$9.35 per hour, and provided with a health benefit.

Covered entities that provide home care aides with health benefits pursuant to a collective bargaining agreement must also comply with the Wage Parity Law. A col-

lective bargaining agreement does not obviate the covered entity’s obligation to provide a “minimum hourly rate” in accordance with the Wage Parity Law. Thus, regardless of the value of benefits provided to aides covered by a collective bargaining agreement, the entity must pay the aides the applicable minimum hourly wage rate.

Compliance Requirements

The New York State Department of Health will provide all covered CHHAs, LTHHCPs, MCPs, and their subcontractors with an official notice of minimum hourly wages and benefit supplement rates by November 1 of each year. In order to receive payment from government agencies, the covered entities must submit written certification to the Department of Health that all services provided under each episode of care are in compliance with the terms of the Wage Parity Law. Providers must remit the certifications to the Department of Health on an annual basis. The Wage Parity Law prohibits “government agencies” from paying any CHHA, LTHHCP, or MCP for any episode of care furnished, in whole or in part, by any home care aide that is not compensated in accordance with the Wage Parity Law. Thus, to ensure receipt of payment for services, covered entities must implement the Wage Parity Law requirements and comply with the annual certification requirements.

Subcontractors of covered entities that provide Medicaid-reimbursable home care services are also subject to the certification requirements of the Wage Parity Law. As such, the subcontractor providers are also required to comply with the legal requirements of the law. The subcontractor providers must submit to the covered entity with which it contracts certification affirming that the subcontractor has compensated its aides in accordance with the Wage Parity Law. The subcontractor certifications must be submitted to the covered entity on a quarterly basis.

Covered entities must maintain records of compliance for at least ten years, since they are subject to review by the Department of Health upon request.

Conclusion

The Wage Parity Law creates new wage and benefit provision requirements for covered providers rendering services reimbursed by Medicaid. To receive payment for services, providers must ensure that they comply with all requirements of the law. And, since there has been no corresponding increase in Medicaid reimbursement rates, receiving payment for all services will become increasingly important for the covered entities.

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