

FINAL NEW YORK STATE BUDGET IMPOSES NEW REQUIREMENTS FOR NEW YORK HOME CARE PROVIDERS AND SIGNIFICANT FINANCIAL INVESTMENTS FOR THE HEALTH CARE INDUSTRY

Hodgson Russ Home Care and Healthcare Alert
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Governor Kathy Hochul signed the 2023-2024 New York State Budget Bill into law on May 3, 2023. The final Budget establishes extensive changes affecting various providers including home care agencies, skilled nursing facilities, hospitals, and physician practices.

Notably, the Budget increases New York State Department of Health (“DOH”) oversight by establishing new reporting requirements for employers of home care aides and Temporary Health Care Services Agencies (“THCSAs”), and increases oversight standards for Managed Long Term Care (“MLTC”) and providers entering into “material transactions.” As we previously reported in our proposed Budget Alert, it also raises the Medicaid reimbursement rate across entity types and increases the minimum wage for home care workers across the State. The key provisions are outlined below.

I. Home Care Provider Compensation Changes

The Budget makes changes to both the wage parity benefit and hourly wage components of the minimum wage requirement for home care workers. The final Budget does not adopt the proposed schedule that would have increased the home care worker minimum hour wage rate to \$18/hour by October 1, 2023. Instead, the final Budget makes a number of changes beginning in 2024 to the minimum wage rate for all home care workers and to the wage parity benefit component for covered providers. These changes are scheduled for implementation as set forth below:

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	Current (\$/hour)	2024 (\$/hour)	2025 (\$/hour)	2026 (\$/hour)
Homecare Minimum Wage - Downstate	\$17.00	\$18.55	\$19.10	\$19.65
Homecare Minimum Wage – Remainder of State	\$16.20	\$17.55	\$18.10	\$18.65
NYC Wage Parity Benefit Rate	\$4.09	\$2.54	\$2.54	\$2.54
NYC Wage Parity Total Compensation	\$21.09	\$21.09	\$21.64	\$22.19
Nassau/Suffolk/Westchester Wage Parity Benefit Rate	\$3.22	\$1.67	\$1.67	\$1.67
Nassau, Suffolk, & Westchester Wage Parity Total Compensation	\$20.22	\$20.22	\$20.77	\$21.32

For the purposes of the home care worker minimum wage, “Downstate” means New York City, Long Island, and Westchester; “Remainder of State” means all other counties in New York State.

The Budget does not detail whether the reduction to worker wage parity funds will be redistributed to other Medicaid programs. It is also unclear if the monies will be reallocated to the Medicaid Quality Incentive Value Added Provider Pool (QIVPP). The Budget also establishes a separate statutory minimum wage rate schedule for non-home health care workers. Under that schedule, minimum wage rates for non-home health care workers would increase to \$17/hour for Downstate, and \$16/hour for the Remainder of the State by January 1, 2026.

Among other [proposed provisions](#) that did not make the cut for the final Budget Bill, the Consumer Directed Personal Assistance Program (“CDPAP”) Supplemental Premium Assistance Fund, which would added a fund to assist personal assistants with the payment of monthly health care premiums, was not included.

II. Increased Home Care Wage and Hour Oversight

Under the amended statute, the Budget allows the DOH to request from any employer of home care aides including LHCSAs and CHHAs any and all records concerning wages, compensation, and benefits, including payroll documents and benefits information. Upon receiving a request from the DOH, employers are required to provide a written response within 15 days of its receipt of the request. The Budget also provides the DOH with the authority to impose civil penalties. Thus, timeliness of the response to the DOH is critical for health entities. Each day that the delinquent entity fails to respond to the DOH will be considered a separate and subsequent violation.

III. Oversight of Managed Long Term Care

The final Budget adopts a less rigorous standard for the oversight of MLTC than [first proposed](#) in February. The Budget now requires existing MLTC plans both: (1) include an active Medicare Dual Eligible Special Needs Plan with a CMS Quality Star Rating of three stars or higher on or before January 1, 2024; and (2) sufficiently demonstrate success in the following enumerated categories:

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1. A commitment to contract with an “adequate” number of LHCSAs and Fiscal Intermediaries needed to provide “necessary” personal care services to the “greatest practicable” number of enrollees.
2. Readiness to implement timely and adhere to the maximum wait time criteria for key categories of service.
3. A commitment to “quality improvement”.
4. Accessibility and geographic distribution of network providers.
5. Cultural and language competencies specific to the enrollees.
6. The ability to “serve enrollees across the continuum of care”.
7. Value-based readiness and experience.

IV. New Requirements for Temporary Health Care Services Agencies (THCSAs)

The Budget amends New York Public Health Law to add Article 29-K, which imposes several new registration, reporting, and disclosure requirements on all THCSAs in the State starting on August 17, 2023.

The Budget requires THCSAs to register annually with the DOH and re-register upon a transfer of certain ownership interests (10% or more) or entering into management agreements. THCSAs include any person or entity (firm, corporation, partnership, association) “in the business of providing or procuring temporary employment of health care personnel for other health care entities” and nurses’ registries, and “entities that utilize apps or other technology-based solutions to provide or procure temporary employment of health care personnel in health care entities.” Individuals who only provide their own services on a temporary basis, as well as LHCSAs and CHHAs, are exempt from these new requirements.

Consistent with the language in the Budget, we anticipate that the DOH will publish further regulation and guidance in this regard. However, at a minimum, THCSAs will be required to provide the DOH the following information on an annual basis:

1. Provide the name(s) and address(es) of any controlling person(s) of the THCSA.
2. Provide the name(s) and address(es) of any health care entities in which any of the THCSA’s controlling person(s) or their family members direct the management or policies and/or have an ownership relationship.
3. Verify its state of incorporation/organization.
4. Demonstrate that “the applicant is of good moral character and able to comply with all applicable state laws and regulations relating to the activities in which it intends to engage under the registration”.
5. Make a payment of \$1,000 to cover registration and annual renewal fees.

THCSAs will also be required to report various wage and hour related information to the DOH on a quarterly basis starting August 17, 2023. The quarterly report must include all hourly rates and fringe benefits, the percentage of health care entity dollars that the THCSA expended on temporary personnel wages and benefits compared to the THCSA’s profits and other administrative costs, names of New York health entities they have contracted with, as well as various information regarding health care personnel including location and staffing numbers.

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The Budget imposes numerous other requirements, including requiring each THCSA to: (1) document that all personnel has satisfied the applicable licensing and training standards; (2) comply with any health care entity personnel requirements such as health assessments and immunizations; (3) retain all health care personnel records for six years and make them available to the NY DOH upon request; (4) comply with any requests made by the NY DOH to examine the books and records of the THCSA, subpoena witnesses and documents; (5) for each of its separate locations, appoint an administrator who is qualified by training, experience, or education to operate the THCSA; (6) maintain a written agreement or contract with each health care entity to which it assigns or refers health care personnel, (7) submit to the NY DOH executed copies of all contracts that it has with health care entities within five business days of the effective date of each contract (although protected from disclosure under the FOIL); and (8) submit to the NY DOH copies of all invoices to health care entities' personnel.

Non-compliance with these new requirements may result in potentially significant civil penalties and fines including actions or injunctions by the New York Attorney General.

V. Oversight of “Material Transactions” involving Health Care Entities

Beginning on August 1, 2023, health care entities will be required to report all “material transactions” to the DOH. Health care entities include physician practices, management or administrative services organizations, health insurance plan, or any other type of health care facility. “Material transactions” include (1) a merger with a health care entity; (2) an acquisition of one or more health care entities; (3) an affiliation agreement or contract formed between a health care entity and another individual; or (4) the formation of an entity for the purpose of administering contracts with health plans, third-party administrators, pharmacy benefit managers, or health care providers. In contrast, “*de minimus* transactions,” which are defined as “a transaction or a series of related transactions that result in a health care entity increasing its total gross in-state revenues by less than \$25 million dollars,” are not included in the reporting requirement.

A health care entity must submit to the DOH written notice with required documentation at least 30 days before the closing of the transaction. The documentation includes copies of any definitive agreements governing the material transaction and a brief description of the nature and purpose of the transaction. The DOH will submit electronic copies of such notice with documentation to the antitrust, health care, and charities bureaus within the office of the New York Attorney General. During the 30 day period, the DOH will also allow opportunities for public comments by posting the information on its website. Consistent with the Budget language, we anticipate that the DOH will provide additional details regarding the process for disclosures in guidance or regulations.

Failure to notify the DOH of a material transaction may subject a health care entity to civil penalties.

VI. Medicaid Reimbursement Rate Increases

Increases to Medicaid reimbursement rates will apply to most providers, upon approval from CMS and in addition to any across the board payment increases to all qualifying fee-for-service Medicaid rates. For inpatient hospital services and nursing homes, the reimbursement rate will increase by up to 7.5 percent. For outpatient hospital services and assisted living providers, the reimbursement rate will increase up to 6.5 percent.

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VII. Capital Funding

As proposed in February, the final Budget included \$1 billion dollars of funding for the Statewide Health Care Facility Transformation Program for eligible health care providers including hospitals, skilled nursing facilities, LHCSAs, and CHHAs.

The Budget allocates up to \$490 million dollars for “capital projects, debt retirement, working capital or other non-capital projects” to improve quality of care, to ensure financial sustainability of health care providers, and to develop capacity in underserved areas of the state. The Budget also allocates up to \$500 million dollars to fund the development of technological and telehealth transformation projects including “projects related to improving cyber security.”

Contact Us

If you have any questions about the new New York State Budget and its implications, please contact [Peter Godfrey](#) (716.848.1246), [Roopa Chakkappan](#) (716.848.1258), or [David Stark](#) (716.848.1369).

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