

Home Care Developments

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DOH Issues Long-Awaited Wage Parity Guidance

Today, the Department of Health (“DOH”) issued “Wage Parity Compliance and Certification Guidance” ([HERE](#)). The guidance elaborates on the wage parity reporting and certification requirements that were passed into law in 2020. In this alert, we summarize the key points from this guidance document.

First Annual Certification is Due to DOH by June 1, 2021

Initially, by way of background, the 2020 Wage Parity Law amendments created new annual reporting and compliance certification requirements. Until today, the State had not disclosed any guidance about these certification requirements and the key question had been: when will the first annual certification, under the new requirements, be due?

Today’s DOH guidance states that by June 1, 2021 (and each year thereafter), all MMCO and MLTC plans, as well as CHHAs, LTHHCPs, LHCSAs and FIs, must submit to the DOH, electronically through the eMedNY Provider Portal, a certification of compliance. Providers that are not currently enrolled in eMedNY must contact the Division of Long Term Care for assistance with completing the 2021 certification through paper submission.

The certifications must be provided by each entity that is enrolled in Medicaid and providing Medicaid-reimbursed services. For integrated companies, or a single company with multiple lines of business, each entity must file a certification.

The certifications must be electronically verified by an “appropriately authorized and knowledgeable executive officer, operator or owner in the organization with actual authority to sign on behalf of the organization.”

MLTC, MCO and CHHA Certification Requirements

For MLTCs, MMCOs, CHHAs, and LTHHCPs, the annual certification will affirm to the following:

- That the services provided by the plan or provider are in full compliance with the Wage Parity Law.
- That no portion of the money spent or to be spent to satisfy the Wage Parity Law “will be returned to the a CHHA, LHCSA, LTHHCP, MMCO, MLTC, or FI, or related persons or entities, other than to a home care aide as defined in PHL 3614-c to whom the wage or benefits are due, as a refund, dividend, profit, or in any other manner.”
- The certification will certify that the MMCO, MLTC, CHHA, or LTHHCP will maintain all records necessary to verify compliance with the terms of the Wage Parity Law for at least 10 years, and that such records will be subject to audit by the DOH and/or its agents for possible retroactive recoupment of Medicaid payments **“for services that are determined to be in less than full compliance.”** The records that must be maintained include applicable attestations and information from LHCSAs and FIs.
- For certifications beginning June 1, 2022 and annually thereafter, that the MMCO, MLTC, CHHA, or LTHHCP has received, reviewed and assessed the annual compliance statement(s) of wage parity hours and expenses provided by each LHCSA or FI, on DOL Form LS-300, accompanied by an independently-audited financial statement verifying such expenses and DOL Form LS-301.

- Certification that the plan or provider will make a written referral to the DOL for any "reasonably suspected failure" of a LHCSA or FI to conform to the Wage Parity Law requirements. Written referrals will be submitted electronically to the DOL [HERE](#).

In addition, "before June 1, 2022 and annually thereafter by June 1," covered MCOs, MLTCs, CHHAs, and LTHHCPs providing services through contracts with FIs and LHCSAs will be required:

- To verify that they received an Annual Compliance Statement of wage parity hours and expenses (LS 300) from such FIs and LHCSAs, and
- That such FIs and LHCSAs provided an Independently Audited Financial Statement verifying wage parity hours and expenses (LS301)

The LS300 and 301 forms will be completed for the year preceding the date that the certification is due.

LHCSA and FI Certification Requirements

Similarly to the payors, LHCSAs and FIs will be required to file annual certifications of compliance, and these attestations will contain the same compliance affirmations as those outlined above for the plans and CHHAs, except that the LHCSA and FI certifications will also include a statement, effective for certifications beginning June 1, 2022 and annually thereafter, that the LHCSA or FI has provided each MMCO, MLTC, CHHA, and LTHHCP an annual statement of wage parity hours and expenses on DOL Form LS-300, accompanied by an independently-audited financial statement verifying such expenses and DOL Form LS-301.

The DOH's guidance notes that MLTCs, MMCOs, and CHHAs may continue to require providers to provide quarterly Wage Parity certifications of compliance. These certifications would continue to be submitted to the MLTCs, MCOs, and CHHAs and not the DOH.

Department of Labor Requirements

The DOH's guidance acknowledges that the New York Department of Labor ("DOL") has issued "new DOL wage parity forms," but it does not provide any answers to how providers should fill out those DOL forms.

Please let us know if you have any questions about this new guidance and its requirements, or about wage parity generally.

Efforts to Repeal the LHCSA RFO are Underway

Late last week, Assemblymember Richard Gottfried introduced a bill in the New York Assembly to repeal the LHCSA RFO. [The bill](#) would repeal those portions of the New York Public Health Law that require authorization for a LHCSA to enroll and continue providing home care services that are paid for by Medicaid (including MLTC Medicaid). Assemblymember Gottfried's bill explains that the bill was introduced because the LHCSA RFO would have "allow[ed] the Department of Health to arbitrarily limit the number of LHCSAs that may participate in Medicaid," and that "[t]his arbitrary and extraneous contract limitation is bad health policy and morally objectionable."

Just today, Senator Rachel May introduced a companion bill in the Senate that would repeal Section 3605-c of the Public Health Law, which is the provision of the law that establishes the LHCSA RFO.

It is not yet clear if these bills will become law, or whether they are merely symbolic gestures by two members of New York's Legislature that have, traditionally, shown strong support for the home care industry with, albeit, limited success. Readers will recall that Assemblymember Gottfried had recently proposed the CDPAP RFO, round two, and his proposal was not successful. Similarly, readers will recall that Senator May was the proponent of raising the home care workers' wages to more than \$35,000 and that bill did not pass in the Legislature either.

It is expected that the two bills proposing the repeal of the LHCSA RFO will face significant pushback and opposition from SEIU 1199, which is vehemently fighting to consolidate the home care industry through the RFO. In a smaller industry, the union sees potential for easier unionization of home care workers. Thus, with such strong (expected) opposition to the repeal of the LHCSA RFO, it is not certain that these measures will become law. However, even if not ultimately successful, these bills will at least signal to the Department of Health that the Legislature is closely watching the Department's moves with respect to licensed home care agencies.

We will report more on these bills as more information becomes available.

This Week, on the Home Care Forum Podcast

This week on the Home Care Forum Podcast, we discuss the newest wage parity guidance, Heroes Act questions (and concerns), and FAQs that providers have had concerning the new recreational marijuana law and the impact on their healthcare workforce.

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