



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

November 15, 2016

Subject: Official Notice of Home Care Worker Wage Parity Minimum Rate of Total Compensation

Dear Administrator:

The purpose of this letter is to provide all certified home health agencies (CHHAs), long term home health care programs (LTHHCPs) and managed care organizations (MCOs) in Nassau, Suffolk and Westchester counties with an official notice of the required minimum rate of total compensation for home care aides pursuant to Public Health Law § 3614-c(3)(b)(iv).

This law was amended in April and June of this year to align with recent changes to New York State's minimum wage law. See Chapter 56 of the Laws of 2016 and Chapter 73, Part E of the Laws of 2016. In accordance with the latest amendments, beginning December 31, 2016:

- the cash portion of the minimum rate shall be \$10.00 per hour, and
- the benefit portion of the minimum rate shall be \$3.22 per hour.

Included in this notice is a document that further explains what is included in the rates for the upcoming Home Care Worker Wage Parity compliance period along with changes in the computation of overtime. If you have any questions regarding this information, please email to the following address: HCWorkerParity@health.ny.gov.

Sincerely,

Andrew Segal, Director
Division of Long Term Care
Office of Health Insurance Programs

Enclosure

cc: Jason Helgerson
Jonathan Bick

Wage Parity 2017 Rates

Nassau, Suffolk and Westchester Counties

For the period of December 31, 2016 through December 30, 2017, the minimum rate for home care aide total compensation (Total Compensation) will be \$13.22 per hour.

This consists of a cash portion (Base Wage) of at least \$10.00 per hour and a benefit portion (Supplemental Wages) of up to \$3.22 per hour.

Wages	Per hour
Base Wage	\$10.00
Supplemental Wages	\$ 3.22
Total Compensation	\$13.22

Overtime	Per hour
FLSA (<i>1½ times regular rate</i>) (<i>if regular rate equals Base Wage</i>)	\$15.00

Total Compensation may be satisfied entirely through wages, or through a combination of wages and supplemental wages, with the following limitations:

The Base Wage is the minimum amount of the Total Compensation that must be paid in cash wages directly to the home care aide as regular hourly wages for all hours worked.

Supplemental Wages are the amount of Total Compensation that employers may satisfy indirectly, for example, by providing education, pension benefits, or health insurance required by federal law. The Supplemental Compensation portion of Total Compensation can be satisfied by increasing the Base Wage rate by a corresponding amount.

Overtime is required at 1½ times the regular rate of compensation under the Fair Labor Standards Act (FLSA) as well as under the New York State Labor Law's provisions for minimum wage and for domestic workers. The exceptions to this general rule that applied to most employers of home care aides and to certain non-profits prior to 2015 no longer apply to third party employers, such as home care agencies, as a result of FLSA overtime Home Care Final Rules issued on October 31, 2013, amending 29 C.F.R. § 552 at 3, 6, 102 and 110. For more information visit www.dol.gov/whd/homecare.

Notice Regarding Overtime Pay under Wage Parity

This notice is provided to clarify the extent to which overtime pay can be used to satisfy the Total Compensation requirements of the Wage Parity Law. While overtime pay can be used to satisfy the Total Compensation requirement for a given hour of overtime, it cannot be used more generally to also satisfy the Total Compensation requirement for non-overtime hours. Thus, for example, if a home care aide's regular rate is \$10 per hour and they are paid \$15 for an hour of overtime, payment of that \$15 for that hour can be used to satisfy the Total Compensation rate for that hour. In that example, if the Total Compensation rate is \$13.22, then that requirement to pay or provide \$13.22 is fully satisfied by payment of \$15, for that same hour of overtime. By contrast, however, no part of the \$15 paid for a given hour of overtime can be used to satisfy the Total Compensation rate for all hours, generally, or for non-overtime hours, specifically.

To the extent that FAQ number 7 from May 2014 can be read to say that overtime paid during a given hour of overtime work cannot be used to satisfy the Total Compensation requirement for that hour, FAQ number 7 is superseded by this notice.