



Office of Health Insurance Programs
Division of Long Term Care

**Managed Long Term Care Policy 21.03: Wage Parity Compliance and Certification
Guidance**

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Applicable To: All managed care programs, organizations or demonstrations covering personal care or home health aide services, and which receive funding, in whole or in part, from New York State Medicaid. This includes but is not limited to Medicaid managed long term care partial capitation plans, Medicaid Advantage plans, Medicaid Advantage Plus plans, and Programs of All-Inclusive Care for the Elderly (PACE) plans (collectively referred to herein as MLTC) and Mainstream Medicaid managed care organizations (MMCO).

Purpose: This Policy guidance informs implementation of the changes to Public Health Law § 3614-c (PHL 3614-c) related to updated wage parity compliance and certification requirements. In Part OO of Chapter 56 of the Laws of 2020, which was enacted as part of the State Fiscal Year 2020-21 budget, PHL 3614-c was revised to include updated certification requirements, additional compliance requirements and penalties for non-compliance. To guide entities impacted by these new requirements, this guidance addresses the following topics:

- A. **Department of Health Wage Parity Certification:** Updated certification forms must be annually submitted to the Department of Health (the Department) by MMCO and MLTC plans, certified home health agencies (CHHA), long term home health care programs (LTHHCP), licensed home care services agencies (LHCSA) and consumer directed personal assistance program fiscal intermediaries (FI).
- B. **Department of Labor Audit and Compliance Requirements:** Overview of new audit and compliance requirements, including new employer statements and new reporting requirements.
- C. **Penalties:** Overview of new penalties for failure to comply with PHL 3614-c.

A. Department of Health Wage Parity Certification

By June 1, 2021 and annually thereafter, all MMCO and MLTC plans, as well as CHHAs, LTHHCPs, LHCSAs and FIs¹ must submit to the Department, electronically through the [eMedNY Provider Portal](#), a certification of compliance with the updated wage parity requirements in PHL 3614-c.

MMCO, MLTC, CHHA and LTHHCP Certifications: The new annual certifications to be submitted by MMCO, MLTC, CHHA or LTHHCP will include the following:

1. That the services provided by the certifying MMCO, MLTC, CHHA or LTHHCP are in full compliance with the Home Care Worker Wage Parity terms of PHL 3614-c and any regulations promulgated pursuant to PHL 3614-c.

¹ FIs that are not enrolled in Medicaid should use a paper submission process. If your FI is not enrolled in Medicaid, please e-mail hcworkerparity@health.ny.gov for a copy of the paper submission.



2. That no portion of the dollars spent or to be spent to satisfy the wage or benefit portion under PHL 3614-c will be returned to 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.
3. That the MMCO, MLTC, CHHA, or LTHHCP(as applicable) will maintain all records necessary to verify compliance with the terms of PHL 3614-c for a period of no less than ten years from the end of the latest calendar year covered by the certification; and that such records will be subject to audit by the Department 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, but are not limited to, applicable attestations and information from LHCSAs and FIs.
4. The certification will also include a statement, which will not be effective for certifications beginning June 1, 2021 but will be effective 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](#). MMCO, MLTC, CHHA, LHCSA, or LTHHCP is required to certify that it will make a written referral to the DOL for any reasonably suspected failure of a LHCSA or FI to conform to the wage parity requirements of PHL 3614-c

LHCSA/FI Certifications:

The new annual certifications to be submitted by LHCSA and FI will include the following:

1. That the services provided by the LHCSA or FI (as applicable) are in full compliance with the Home Care Worker Wage Parity terms of PHL 3614-c and any regulations promulgated pursuant to PHL 3614-c.
2. That no portion of the dollars spent or to be spent to satisfy the wage or benefit portion under PHL 3614-c will be returned to 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.
3. That LHCSA or FI will maintain all records necessary to verify compliance with the terms of PHL 3614-c for a period of no less than ten years from the end of the latest calendar year covered by the certification; and that such records will be subject to audit by the Department and/or its agents for possible retroactive recoupment of Medicaid payments for services that are determined to be in less than full compliance.
4. The certification will also include a statement which will not be effective for certifications beginning June 1, 2021 but will be 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](#).



NOTE: While PHL 3614-c does not expressly require that LHCSA and FI submit a quarterly certification to MMCOs, MLTCs, CHHAs and LTHHCPs, such entities may continue to require that LHCSA and FI submit quarterly certifications through contractual arrangements in order to assist with meeting their own certification requirements. If contractual required, these quarterly certifications would continue to be submitted directly to the MMCO, MLTC, CHHA or LTHHCP, and not the Department.

Instructions for Completion of Health Electronic Wage Parity Certification Form

The Department has converted to a process whereby certifications are completed and submitted electronically through the [eMedNY Provider Portal](#). This certification process must be completed annually on or before May 31.

Certifications must be completed for each entity that is enrolled in Medicaid and providing Medicaid-reimbursed services, *i.e.*, if a parent organization owns or controls more than one agency, the certification must be signed for every separately incorporated entity and for every provider enrollment type.

For example, if a parent company owns or controls separately incorporated and enrolled entities that provide Medicaid services as a CHHA, as a LHCSA and as an FI, they would log in and complete three certifications—one for each entity based on their type of Medicaid enrollment.

Similarly, if a parent company owns or controls four LHCSAs, they would log in and complete four certifications, one for each entity.

Finally, if a single legal entity is enrolled as a CHHA and as a LHCSA, then it would complete two certifications—one as a CHHA and one as a LHCSA, even though it is a single legal entity.

To complete the certification:

1. Log into the [Provider Portal](#)
2. Click on the Wage Parity Attestation banner
3. Enter the organization's NYS Medicaid Provider ID (MMIS number) or NPI.
4. The system will send an email containing a PIN, which will allow you to confirm the account
5. Enter the PIN sent to the provider's correspondence email
6. Fill out the Wage Parity Certification form, which will direct you to choose if you are submitting it for your CHHA, FI, LTHHCP, LHCSA, or MCO.
7. Submit the transaction

If remaining logged in, follow steps 2 through 7 for each certifying organization.

Each certification 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, including:

- For-profit and proprietary entities: Operator, Owner, or Chief Executive Officer
- Not-for-profit or voluntary entities: Chief Executive Officer, Chief Financial Officer, or Chairperson of the Governing Body, or Governing Body with appropriate authority under the corporate bylaws (e.g., President, Vice President, Secretary or Treasurer)



- Government or public entities: Public Official Responsible for the Operation of the organization

If a certifying organization is not currently enrolled in eMedNY, please contact the Division of Long Term Care (DLTC) at hcworkerparity@health.ny.gov for assistance with completing the 2021 annual certification through a paper submission. The certifying organization should also contact eMedNY at the address in the instructions above to begin the enrollment process. By June 1, 2022, no paper forms will be accepted.

B. Department of Labor Audit and Certification Requirements

In addition to the Department's wage parity certification revisions, there are new DOL wage parity forms and requirements applicable to each MMCO, MLTC, CHHA, LTHHCP, LHCSA and FI. An overview of these requirements is listed below; however entities must visit the DOL website at <https://dol.ny.gov/home-health-care-aides-and-wage-parity> for instructions and additional information on these new DOL requirements.

New Employer Statements Required

Before June 1, 2022 and annually thereafter by June 1st, all MMCO, MLTC, CHHA, and LTHHCP providing home care aide services subject to PHL 3614-c through contracts with LHCSA or FIs will verify, in the Department certification described above, that they have received from the LHCSA or FI the following:

- an Annual Compliance Statement of Wage Parity Hours and Expenses ([LS 300](#)) accompanied by
- an Independently Audited Financial Statement Verifying Wage Parity Hours and Expenses ([LS301](#))

LS300 and LS301 forms (or their successor forms) for the year preceding each certification will be completed by each LHCSA and FI and submitted to each MMCO, MLTC, CHHA, and LTHHCP with which they contract.

New Reporting Requirements for Non-Compliance with Wage Parity Law

MMCO, MLTC, CHHA and LTHHCP are required to review and assess the annual compliance statement of wage parity hours and expenses as provided through the LS300, and make a written referral to DOL for any reasonably suspected failures of LHCSA or FI to conform to the wage parity requirements of PHL 3614-c. Written referrals should be submitted electronically via the DOL [Wage Parity Non-Compliance Referral Form](#).

Additional information is available at the DOL website: <https://dol.ny.gov/home-health-care-aides-and-wage-parity>. Questions on these requirements can be directed to 888-439-7365 or LSAsk@labor.ny.gov.



C. Overview of penalties for wage parity non-compliance

Any MMCO, MLTC, CHHA, LHCSA, LHHHCP, or FI that willfully pays less than the minimums regarding wages and supplements established in PHL 3614-c is, upon conviction, guilty of a misdemeanor. A first offense will be punished by a fine of \$500 or imprisonment for up to thirty days, or by both a fine and imprisonment.

For a second offense, the organization will be punished by a fine of \$1,000 and the contract on which the violation occurred shall be forfeited. Any entity convicted of a second violation will also no longer be able to receive Medicaid funding or provide Medicaid services for which the State would authorize payments to the entity.