



Department of Health

ANDREW M. CUOMO
Governor

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

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

JAN 29 2016

Re: LTHHCP FLSA Rate Adjustment

Dear Administrator:

A copy of the revised 2015 Long term home health care program Medicaid payment rates effective October 13, 2015 is now available on the Health Commerce System (HCS) website.

In accordance with Section 3614, paragraph 9 of the Public Health Law, the Department is authorized to make rate adjustments for long term home health care programs (LTHHCP) under the recruitment training and retention provisions to address increased compensation expenses stemming from federal labor requirements under the US Department of Labor's (DOL) recently published Final Rule on minimum wage and overtime protections.

Background

The US Department of Labor's (DOL) Final Rule concerning companionship exemption under the Federal FLSA brings minimum wage and overtime protection to the personal care and home health aide workers. Based on the US Court of Appeals August 21, 2015 unanimous opinion affirming the validity of this Final Rule, the US DOL has confirmed it to be effective October 13, 2015.

This Final Rule contains several significant changes from the prior Federal regulations, including:

- 1) Overtime – A significant effect of the Final Rule is that more NYS home care service workers will be protected by the FLSA's minimum wage, overtime, and recordkeeping provisions. Specifically for NYS, the rule requires payment of overtime at time and one half of wage versus the former requirement of overtime paid at time and one half of minimum wage.
- 2) Travel Time – The Final Rule states that travel within a day's work for an employee between clients or on behalf of a client such as to the grocery store or post office are compensable hours.
- 3) Live-in Rules – For live-in workers who previously were only allowed to bill up to 13 hours of care per day, the Final Rule allows for additional billable hours in the event that the worker's meal periods, sleep time, or other periods of free time are interrupted by a clients' needs.

Rate adjustments

The Department of Health's Office of Health Insurance Programs (OHIP) has done an expeditious assessment and determination of the initial additional Medicaid funding that is necessary to assist providers in ensuring that the new FLSA requirements for overtime are properly implemented for home care workers. The Department has determined to expedite this funding through rate relief to fee-for-service home care programs retroactive to October 13, 2015. In accordance with Public Health Law Section 3614, and based on consultation with Mercer (the Department's actuary), the Department has determined to uniformly apply the home care industry standard that 10% of total hours worked are associated with overtime. The adjustment also includes additional funding for new FLSA employee travel and live-in requirements noted above. The total per hour adjustment is estimated to be an increase of \$0.34 per hour across all home health aide hours.

For your enclosed LTHHCP rates, the determined uniform per hour amount of \$0.34 has been added to the rates for personal care, home health aide and home and community support services for the period October 13, 2015 through December 31, 2015.

It is important to note that this additional funding is provided under the recruitment training and retention methodology authorized by PHL Section 3614, paragraphs 9 and 10 and as such, to the extent such funding is not utilized to meet new overtime and travel requirements, agencies must use such funds for the purpose of recruitment training and retention of non-supervisory direct care workers only and agencies are prohibited from using such funds for any other purpose. The funding is subject to all existing statutory requirements in PHL Section 3614, paragraphs 9 and 10.

NYC Wage Parity

The enclosed rates for New York City providers effective October 13, 2015 continue to include the previously determined wage parity adjustment for New York City in addition to the enclosed FLSA adjustment noted above.

Both the FLSA adjustment, and the NYC wage parity adjustment if applicable, have been applied to the bottom-line "Revised 2015 Rates" on page 3 of your rate sheet through an override to the "Medicaid Rate" prior to the historical recruitment and retention adjustment and the recruitment, retention and training percentage adjustment.

FLSA Survey

As previously communicated, the Department is developing a survey in conjunction with Mercer actuaries and with input from the NYS home care associations to gather data on this important issue that will provide a more accurate impact of the FLSA final rule adjustment for 2016. The survey is intended to be distributed to home care agencies shortly via a separate letter. Results from the survey will be reviewed by the Department and Mercer in the coming months to more accurately evaluate the scope of hours impacted by FLSA and to assess the potential need for any revised adjustment in final 2016 and subsequent rates.

The rates on the attached schedule have been forwarded to the Department's eMedNY system for payment. If you have any questions related to the methodology utilized in the

calculation of your 2015 Medicaid rates or the accuracy of your rate, please contact Russ Smith at (518) 473-4421.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Steve Simmons', with a long horizontal flourish extending to the right.

Steve Simmons
Director
Bureau of Managed Long Term Care

Enclosure