

# Home Care Developments

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## NYS Budget is Out What does it mean for Home Care?

The final NYS Budget was released over the weekend. In addition to bail reform, gas price relief, childcare and other measures, the Budget contains a lot of relevant information for the home care industry. As we have already reported on the CDPAP changes from the Budget, this alert will focus on the remaining aspects of the Budget.

### 1. FAIR PAY FOR HOME CARE IS IN, SOMEWHAT

A 150% increase to the base wages of home care workers was **not** passed, however, the Budget states that beginning October 1, 2022, the hourly minimum wage for home care workers (which includes personal assistants and NHTD/TBI workers) will increase by \$2.00. Starting on October 1, 2023, the minimum wage will increase again by an additional \$1.00.

It is not clear how these increases will be funded. The Budget does not expressly appropriate funding for this increase in wages. Home care advocacy groups are working on ensuring that the necessary reimbursement comes through, and we have heard from various sources that the Legislature intends to “pick up” this issue post-Budget. To ensure adequate and timely reimbursement, providers should not only speak to their plans (who are also in a position to demand additional reimbursement from New York State) but also advocate and lobby with their local elected officials.

The Wage Parity benefits increases that were proposed by the Assembly and Senate are not in the Budget.

### 2. BONUS PAY FOR HEALTHCARE WORKERS

**Subject to federal participation and funding**, the final Budget also includes a one-time bonus for “certain front line health care and mental hygiene practitioners...” According to the Budget bill, the bonus would apply to LHCSAs and FIs (among other healthcare providers) and is intended to “attract talented people into the profession at a time of significant strain...and reward them financially for their service.” However, the Budget defines eligible employees as “assistants” (presumably FI personal assistants) and “aides” (presumably LHCAs and CHHA aides) “that provide hands on health or care services to individuals...that received an annualized base salary of [\$125,000] or less, to include [various healthcare professionals, as listed].” HHAs, PCAs, and PAs in CDPAP are not specifically listed as the types of personnel covered by the Budget bill. We have also heard this morning **that the Office of Budget does not consider home care and fiscal intermediary direct care staff to be covered by this Budget bill**. We are monitoring this issue and will update our readers as more information becomes available.

Per the Budget, worker bonuses would be commensurate with the number of hours worked during a vesting period, with the vesting periods being determined by a schedule published by the Commissioner of Health. The bonus program would provide

for total payments not to exceed \$3,000 per employee based upon the number of weekly hours worked in a vesting period.

The Commissioner of Health will develop forms and procedures to identify the number of hours of employees worked, and forms related to reimbursement to employers. Employers will track the number of hours worked by employees and submit claims for reimbursement of employee bonus payments. Employers will be responsible for determining if an employee is eligible under this law for the bonus.

Similar to the language in the Wage Parity Law, the Budget specifically states that “no portion of any dollars received from claims [for bonus reimbursement]...shall be returned to any person other than the employee to whom the bonus is due,” and, for wage parity providers, the Budget states that no portion of the bonus amounts can be used to reduce the “total compensation” required to be paid under the Wage Parity Law.

Compliance with the law will be monitored by the Office of the Medicaid Inspector General (“OMIG”). Inappropriate claims for bonus reimbursement will be treated as Medicaid overpayments and may be recovered as such. OMIG could also impose other penalties and exclude providers from Medicaid participation as punishment for any wrongdoing related to this bonus program.

### **3. LHCSEA RFO HAS NOT BEEN REPEALED**

Despite strong advocacy efforts, the LHCSEA RFO has not been repealed. Under the law as it currently stands, the DOH is required to issue a LHCSEA RFO. We do not know when that will happen, despite indications that the LHCSEA RFO would be “implemented” on May 1, 2022. In view of the significant pushback that the CDPAP RFO has received, it is likely that the same advocacy and litigation will ensue once the LHCSEA RFO results are announced.

### **4. MLTC RFO IS A NO-GO**

The final Budget does not establish a MLTC RFO, as had been proposed by the Executive. Instead, the Budget commands the Department of Health to appoint an independent contractor to “generate a report that reviews and makes recommendations concerning the status of services offered by managed care organizations contracting with” the NYS Medicaid program. Thus, instead of a MLTC RFO, the State will conduct a study on and about managed care.

### **5. INDEPENDENT ASSESSOR IS ON TRACK FOR 5.1.22**

The independent assessor provisions that are on track for May 1, 2022, have not been repealed through the Budget. However, the Budget contains a provision that sunsets the Independent Assessor (IA) selection no later than September 30, 2025. The Budget also significantly modifies the statute language that outlines the process by which an independent assessor is selected.

### **6. OTHER IMPORTANT HOME CARE RELATED ITEMS FROM THE BUDGET**

A. The Medicaid Global Cap has been redefined. The methodology for calculating the cap has changed from a 10-year rolling average to a 5-year average and will now be based on the annual growth rate projections from the Centers for Medicare and Medicaid Services’ (CMS) actuary offices. The intention of the change is to provide a more accurate picture of Medicaid spending and growth of the Medicaid program.

B. As proposed by the one-house budget bills, the Budget includes enhanced rates for Private Duty Nursing in the medically fragile children program will now extend to care for those individuals after they reach age 23. Rates may be calculated by the Commissioner of Health from average 2020 Medicaid Managed Care payments.

C. The Budget includes a 1% rate increase for home care, hospice and other healthcare providers, as well as an elimination of the current 1.5% reduction to Medicaid rates.

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