



LHCSA RFO- What You Can Do Today

We previously [reported](#) on general criteria DOH has indicated it will include in the LHCSA Request for Offers. LHCSAs that are not awarded a contract under the RFO will not be able to provide services reimbursed by Medicaid (this would include services provided pursuant to MLTC contracts). In that article, we highlighted general areas of LHCSA operations that agencies should audit or improve as appropriate to demonstrate their qualifications for a contract.

Periodically, we will focus on specific RFO areas and discuss actions you can take now to mobilize your staff, documents and resources for your LHCSA's RFO response.

Compliance with Labor Standards, Wage Parity, Equal Employment Opportunity Requirements and Anti-Discrimination Laws

DOH has stated that one of the general criteria for selection of LHCSA contractors will include demonstrated compliance with all applicable federal and state laws and regulations including, but not limited to, past compliance with labor law and existing wage and labor standards, and compliance with equal employment opportunity requirements and anti-discrimination laws.

If you have not recently done so, conduct an internal audit, review and revise your documentation and reconcile paper and practice related to the following areas, which are some of the pay and employment standards you can focus on now to prepare your agency for an RFO response and business thereafter.

- **New York and Federal Labor Standards**

- Generally, you must pay all your employees the State minimum wage for each hour worked and overtime at 1.5 times the regular rate of pay unless such employees are "exempt."
- Administrative employees are also entitled to overtime pay unless they are "exempt" under law. To be exempt from overtime requirements, your administrative staff must generally be paid a salary of at least \$1,125/week in New York City, \$975/week remainder of downstate, or \$885/week rest of state, and have certain qualifying non-manual duties prescribed by law.
- For all non-exempt employees, review your practices to ensure you are complying with split shift, spread of hours, and call-in pay standards, and taking proper precautions for payment of live-in aides under the 13-hour rule. Minimum and overtime pay standards apply to aides, whether or not covered by wage parity, for all hours worked, which includes required job training.
- For all employees, review your paid time off policies to ensure compliance with the minimum paid sick and safe leave standards currently applicable in New York City and Westchester County, which generally provide for a rate of accrual of at least one (1) hour of paid time off for every 30 hours worked. Ensure that your paid time off policies are being administered or paid out in accordance with the terms distributed to employees. Continue to keep records of leave (paid and unpaid) used by your employees during the pandemic, whether under the [State's COVID-19 leave law](#) or under the [federal Families First Coronavirus Response Act](#). Remember that on September 30, 2020, your employees will be entitled to accrue paid sick leave under [new state law](#).

- If you are compensating any individuals as independent contractors, review their duties and the terms of their engagement to ensure that they are properly classified. If your field workers are unionized, review your union contracts and all amendments to understand your compliance standards. Be able to describe the status of any pending negotiations or grievances involving your agency.
- Ensure you are in continued compliance with State requirements for the provision of workers' compensation, disability and unemployment insurance.
- **Equal Employment Opportunity Requirements and Anti-Discrimination Laws**
 - Ensure you are posting all required [Federal](#) and [State](#) employee notices.
 - Review your policies, employee handbooks and practices for compliance with the standards described in the required notices and otherwise required by law. For instance, your handbooks should be clear regarding anti-harassment and non-discrimination standards (which extend to non-employees under the State's Human Rights Law), workplace safety and wages, and contain pathways by which employees may report violations to supervisory staff trained to handle and commence investigation of such complaints.
 - Assess the current status, your agency's position and strategy concerning proceedings involving the agency before the [EEOC](#), [DOL](#), [OSHA](#), [DHR](#), [CCHR](#), or any other governmental agency or private party. Provide, and have documentation of, sexual harassment training for new and existing employees (generally required upon hire and once a year thereafter) in compliance with State and New York City law.
 - Assess workplace safety standards and document efforts to comply with [DOH](#), [EEOC](#), [OSHA](#) and [CDC](#) guidance during this pandemic. Document efforts to ensure that layoffs and furloughs of groups of employees were done in compliance with the [Federal](#) and [State](#) WARN Acts. Document efforts to ensure that federal and state leave entitlements were administered on rational bases and in accordance with existing policies and procedures.
- **Wage Parity Compliance**
 - Under the existing [Wage Parity Act](#), home care aides working on episodes of care reimbursed in whole or in part by Medicaid must be paid the State minimum wage in cash and additional/supplemental wages at \$3.22/hour in Nassau, Suffolk and Westchester counties, or \$4.09/hour in New York City. Identify your aides working on Medicaid-reimbursed episodes of care and the location of service hours, and ensure they are receiving wage parity compensation at the proper minimum levels.
 - Review your wage parity program to ensure that no portion of the wage parity dollars spent or to be spent to satisfy the wages or benefit portion are returned (directly or indirectly) to the agency, related persons or entities, other than to a home care aide to whom the wage or benefits are due, as a refund, dividend, profit, or in any other manner. Also, effective October 1, 2020, specific information concerning non-cash wages to be paid to the aide under the Wage Parity Act must also be included in the Notice of Pay to be delivered to aides under the New York Labor Law and the aide's pay stub.
 - Review non-cash benefits provided to home care aides. Identify the benefits for which you are taking wage parity credit, the accrual rate per hour worked and the manner by which the aide receives benefits. For LHCSA RFO purposes, be ready to explain the benefits for which you are taking wage parity credit.
 - As you audit your wage parity benefit program to prepare for the LHCSA RFO, also assess it in light of the new wage parity standards to make necessary changes, which may take significant time. For example, in addition to accrual, assess how and whether your existing wage parity benefits are accessed by the aides. Review agreements with benefits providers, administrators and insurers contracted to provide non-cash benefits. Survey the utilization rates of such benefits and consider replacing benefits with low utilization. Assess the disposition of funds representing accrued and unused wage parity benefits under each program, and revise programs that result in disposition of unused funds to the agency or related person.

Convert and store documents electronically in .PDF format where your staff can access and reference them quickly and for use in preparing your RFO submission. If you plan on making a submission,

you and your team should begin reviewing and analyzing your operations as early as possible.

Feel free to [contact](#) our office with any questions you have concerning the LHCSA RFO.

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