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Client Alert

April 8, 2026

Wage Parity Compliance and Certification Guidance Update

On March 9, 2026, the Department of Health (DOH) updated the home care worker wage parity compliance requirements and due dates. Agreed Upon Procedures (AUPs) have been developed as an optional method for providers to verify information reported on the Department of Labor (DOL) Annual Compliance Statement of Wage Parity, Hours and Expenses Form (Form LS300) and completing the DOL Employer's Statement Verifying Wage Parity Hours and Expenses Form (Form LS301). AUPs must be conducted by a Certified Public Accountant (CPA). For the years 2021, 2022, 2023, 2024, and 2025, AUPs or other audited financial statements may be completed for the entire agency and need not be completed by each managed care contract. Beginning in 2027 for calendar year 2026, audited financial statements or AUPs will be required for each contract with Certified Home Care Agencies (CHHAs) or Medicaid Managed Care Organizations (MMCOs).

The compliance due dates for calendar year 2025 are as follows:

- Licensed Home Care Service Agencies (LHCSAs), Former Fiscal Intermediaries (FFIs), and the Statewide Fiscal Intermediary (FI) must submit Form LS300 to all contracted CHHAs and MMCOs by May 31, 2026;
- CHHAs must submit Form LS300 to all contracted MMCOs by April 30, 2026;
- LHCSAs, FFIs, FI, CHHAs, and MMCOs must submit the Annual Certification of Compliance with Home Care Worker Wage Parity to the DOH by May 31, 2026.

The compliance due dates for calendar year 2026 and subsequent years will be as follows:

- LHCSAs and FI must submit Form LS300 by June 1 of each year and Form LS301 and audited financial statements or AUPs by October 1 of each year to all contracted CHHAs and MMCOs;
- CHHAs must submit Form LS300 by June 1 of each year and Form LS301 and audited financial statements or AUPs by October 1 of each year to all contracted MMCOs;
- LHCSAs, FI, CHHAs, and MMCOs must submit the Annual Certification of Compliance with Home Care Worker Wage Parity to the DOH by December 1 of each year.

Providers should be aware that although the Department's guidance is not clear with respect to the submission date for Form LS301 for calendar years 2021-2025, we are confirming with DOH that the date for submission is October 1, 2026. We will keep you updated with a confirmed deadline when it becomes available.

National Labor Relations Board Formally Reinstates 2020 Joint-Employer Standard

On February 27, 2026, the National Labor Relations Board (NLRB) published a final rule formally withdrawing the 2023 joint-employer rule and reinstating the narrower 2020 joint-employer standard under the National Labor Relations Act (NLRA). By way of background, the 2023 rule had significantly expanded joint-employer liability by permitting findings of joint-employer status based on indirect or unexercised contractual authority over another employer's employees. In March 2024, a federal district court vacated the 2023 rule before it ever took effect. The February 2026 rule formally codifies that result, reinstating the 2020 standard in the Code of Federal Regulations. The reinstated 2020 standard for determining joint-employer status is as follows:

- An employer may be considered a joint employer of a separate employer's employees only if the two employers share or co-determine the employees' essential terms and conditions of employment, which include wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction.
- To establish that an entity shares or co-determines the essential terms and conditions of another employer's employees, the entity must possess and exercise such substantial direct and immediate control over one or more essential terms or conditions of employment as would warrant a finding that the entity meaningfully affects matters relating to the employment relationship. Indirect control or unexercised contractual authority alone is not sufficient to establish joint-employer status.

The reinstatement of the 2020 standard is significant for home care agencies, staffing organizations, and other entities that engage third-party labor providers or contract workers, as it substantially reduces the risk of a joint-employer finding based solely on contractual or indirect relationships. Employers should review their staffing arrangements and day-to-day operational practices to ensure they remain consistent with this standard.

CHRC Requirements and Best Practices

On March 20, 2026, the Director of the Criminal History Record Check (CHRC) Bureau issued a Dear Administrator Letter (DAL) regarding CHRC requirements and best practices. The DAL included the following reminders:

- CHRC laws and regulations apply to every provider of services to patients, residents, or clients that is a certified home health agency, licensed home care services agency, or long-term home health care program certified, licensed, or authorized under Article 36 of the Public Health Law;
- An Authorized Person is an individual designated by a provider who is authorized to request, receive, and review criminal history information. Any designated Authorized Person may be contacted by the Department of Health (DOH) regarding the status of an employee. Only individuals designated as a CHRC Authorized Person may contact CHRC for status updates, inquiries, results, and similar matters. Authorized Persons should be in-house, not third-party contractors, to ensure compliance with surveillance and confidentiality requirements. Providers should routinely review who is listed as an Authorized Person;
- A provider must request a CHRC by having an Authorized Person complete and submit a request form and transmit two sets of fingerprints to the DOH. The provider must attest that it, its agents, and its employees are aware of and will abide by the confidentiality requirements and all other provisions of Public Health Law Article 28-E and Executive Law section 845-b;
- Providers may access any determination made upon a prospective employee at such time as the prospective employee presents for employment. Employment eligibility decisions made by the DOH are available only to providers, not third-party contractors;
- Only those in the hiring and termination chain are permitted access to employment decisions and criminal history information. Criminal history information must be inaccessible to individuals who are not authorized to receive or view the information;
- Each Health Commerce System user must have their own user identification and password. Sharing Health Commerce System account access may result in revocation of the account. Multiple violations that compromise the security of account usage may result in the organization's inability to conduct business on the Health Commerce System. If a party willfully permits the release of any confidential criminal history information to a person not authorized to receive it in accordance with Article 28-E of the Public Health Law, that party shall be guilty of a misdemeanor pursuant to Executive Law section 845-b(3)(a) and Public Health Law section 12-b;
- The name submitted within the CHRC application must be the exact same name and spelling as on the valid photo identification, and active employees must not be resubmitted;
- Providers must immediately notify the DOH when an individual becomes subject to a CHRC request, or when an individual who was subject to a CHRC is terminated;
- No provider shall seek, directly or indirectly, to obtain compensation in any form from a prospective employee, temporary employee, or regular employee for fees or any provider or facility costs associated with obtaining the CHRC;
- The Acknowledgment and Consent for Fingerprinting and Disclosure of Criminal History Record Information form must be signed by the prospective employee with a wet signature prior to submission;
- All CHRC documents must be available for inspection purposes;
- Individuals must be supervised while awaiting CHRC clearance. Individuals who receive a favorable determination may work without supervision. Individuals who receive a negative determination must be immediately removed from providing direct care;

- An Authorized Person must conduct a risk assessment pursuant to all relevant laws to determine whether the provider wishes to continue to employ a previously cleared employee who receives a subsequent arrest notification.

2026 Medicaid Update Released

On March 2, 2026, the Department of Health (DOH) released a Medicaid update. The update includes the following reminders to providers regarding self-disclosure obligations:

- Providers have the obligation to report, return, and explain any overpayments through the New York Office of the Medicaid Inspector General (OMIG) Self-Disclosure program or their contracted Medicaid Managed Care (MMC) Organizations for NYS Medicaid managed care overpayments within 60 days of identifying the overpayment or by the date any corresponding cost report is due;
- Providers should regularly review their billings to ensure accuracy;
- Providers cannot submit self-disclosures for overpayments that are currently subject to audit. If audited, providers should exercise reasonable diligence to identify overpayments in other time periods for similar issues;
- It is recommended that providers document any internal audit or review conducted, and the results of such audit or review. If after their review a provider determines that no overpayment is due, no further action is required. Such documentation may be requested in a future NYS OMIG audit or review, or a compliance program review pursuant to 18 NYCRR 521-1.

Centers for Medicare and Medicaid Services Launches Probe of NY Medicaid

On March 3, 2026, the Centers for Medicare and Medicaid Services (CMS) sent a letter to Governor Hochul, Commissioner McDonald, NYS Medicaid Director Bassiri, and Acting Medicaid Inspector General Walsh (the “Named Officials”) requesting information on the following subjects regarding program integrity, provider screening, and enrollment oversight in the NY Medicaid program:

- Program-level oversight of Fraud, Waste, and Abuse (FWA) and improper payments;
- Provider screening, enrollment, and revalidation;
- Program integrity, infrastructure, and accountability;
- High-risk billing patterns and systemic vulnerabilities.

On the same date, the House Committee on Energy and Commerce sent a separate letter to Governor Hochul requesting records and communications regarding Medicaid fraud and the measures being taken to identify fraud and strengthen program integrity.

CMS’s request targets New York’s oversight of the following services identified as high-risk service categories:

- Personal care, including the Consumer Directed Personal Assistance Program (CDPAP);
- Home health;
- Adult daycare programming;
- Non-emergency medical transportation (NEMT);
- Behavioral health services.

CMS attributes the need for this investigation to New York Medicaid’s expenditures exceeding those of the majority of states, both on a statewide and per-beneficiary basis. According to CMS, this elevated level of spending reflects a combination of factors, including a high ratio of New Yorkers enrolled in Medicaid relative to the state’s population, potential fraud, expansive benefit structures, excessive provider payments, and a seemingly excessive increase in the long-term care workforce. CMS officials had warned that if the Named Officials did not provide a satisfactory corrective action plan by April 2, 2026, CMS would begin deferring payments to New York. The April 2, 2026, response deadline has now passed. Although the Hochul administration responded publicly to the CMS letter, it does not appear that any formal corrective action plan has been reported. We will continue to follow the situation and provide updates as developments occur.

New York City Department of Consumer and Worker Protection Posts Updated Notice of Employee Rights for Protected Time Off

On February 19, 2026, the New York City Department of Consumer and Worker Protection (DCWP) issued an updated notice of employee rights reflecting the recent amendments to New York City’s Earned Safe and Sick Time Act (ESSTA) that took effect on February 22, 2026. Employers must distribute this updated notice to each employee in the employee’s primary language and must post the notice in a location that is visible and accessible to employees, in English and in any other language spoken by employees in that workplace.

As a reminder, the ESSTA amendments require employers to provide 32 hours of unpaid safe and sick time to covered employees immediately upon hire and at the start of each calendar year, with no waiting period for use. Unused unpaid leave does not carry over into the following year, and, where available, paid safe and sick time must be utilized before unpaid safe and sick time, unless the employee specifically requests otherwise. The amendments also expand the qualifying reasons for use of safe and sick time to include caregiving for a minor child or care recipient, pursuing subsistence benefits or housing, workplace violence, and public disasters. In addition to paid safe and sick time, employers are required to provide 20 hours of paid prenatal leave during any 52-week calendar period.

With respect to collective bargaining agreements, the ESSTA amendments permit the law to be waived where a valid collective bargaining agreement expressly waives ESSTA's requirements and provides "superior or comparable benefits." Employers should note, however, that unpaid time off does not constitute a "comparable benefit" for purposes of satisfying the paid safe and sick time or paid prenatal leave requirements under the ESSTA.

Jury Awards $954,000 to Employee on Disability Discrimination Claims

In a recent Nassau County case, a jury awarded an employee $954,000 against her employer for disability discrimination in violation of the New York State Human Rights Law. The employee had been diagnosed with long COVID and requested permission to work remotely as a reasonable accommodation, which the employer denied. The jury found in favor of the employee, who demonstrated that she could perform the essential functions of her position with the requested accommodation, and found that the employer failed to establish that granting the accommodation would have caused undue hardship. This case serves as an important reminder to review your accommodation policies and procedures to ensure compliance with applicable federal and state law.

Under both the Americans with Disabilities Act (ADA) and the New York State Human Rights Law, employers are required to provide reasonable accommodations to individuals with disabilities, provided doing so does not cause significant difficulty or expense. The accommodation process should involve an interactive dialogue between the employer and the requestor. As best practice, employers engaging in the interactive process should:

- Analyze the job involved and determine its purpose and essential functions;
- Review any medical documentation provided and ensure that the requestor's specific functional limitations are clearly identified. The employer may request additional medical documentation to clarify the functional limitations underlying the accommodation request;
- In consultation with the requestor, identify how job-related limitations could be addressed through reasonable accommodation, and assess the effectiveness of each potential accommodation in enabling the requestor to perform the essential functions of the position;
- Consult with the requestor's supervisor to assess whether the proposed accommodation is operationally feasible and would allow the requestor to fully perform the essential functions of the position;
- Give due consideration to the requestor's preference and select and implement the accommodation that is most appropriate for both the requestor and the employer;
- Maintain records documenting all discussions and the decision-making process used when evaluating the accommodation request and any alternative options considered, particularly where the employer modifies or denies a request.

If you have any questions please contact our office.

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