

1 § 3. This act shall take effect immediately and shall be deemed to
2 have been in full force and effect on and after April 1, 2020; provided
3 further, however, that the director of the budget may, in consultation
4 with the commissioner of health, delay the effective dates prescribed
5 herein for a period of time which shall not exceed ninety days following
6 the conclusion or termination of an executive order issued pursuant to
7 section 28 of the executive law declaring a state disaster emergency for
8 the entire state of New York, upon such delay the director of the budget
9 shall notify the chairs of the assembly ways and means committee and
10 senate finance committee and the chairs of the assembly and senate
11 health committees; provided further, however, that the director of the
12 budget shall notify the legislative bill drafting commission upon the
13 occurrence of a delay in the effective date of this act in order that
14 the commission may maintain an accurate and timely effective data base
15 of the official text of the laws of the state of New York in furtherance
16 of effectuating the provisions of section 44 of the legislative law and
17 section 70-b of the public officers law.

18

PART 00

19 Section 1. Section 3614-c of the public health law, as amended by
20 section 5 of part S of chapter 57 of the laws of 2017, subdivision 2 as
21 amended by section 10 of part G of chapter 57 of the laws of 2019, is
22 amended to read as follows:

23 § 3614-c. Home care worker wage parity. 1. As used in this section,
24 the following terms shall have the following meaning:

25 (a) "Living wage law" means any law enacted by Nassau, Suffolk or
26 Westchester county or a city with a population of one million or more
27 which establishes a minimum wage for some or all employees who perform
28 work on contracts with such county or city.

29 (b) "Total compensation" means all wages and other direct compensation
30 paid to or provided on behalf of the employee including, but not limited
31 to, wages, health, education or pension benefits, supplements in lieu of
32 benefits and compensated time off, except that it does not include
33 employer taxes or employer portion of payments for statutory benefits,
34 including but not limited to FICA, disability insurance, unemployment
35 insurance and workers' compensation.

36 (c) "Prevailing rate of total compensation" means the average hourly
37 amount of total compensation paid to all home care aides covered by
38 whatever collectively bargained agreement covers the greatest number of
39 home care aides in a city with a population of one million or more. For
40 purposes of this definition, any set of collectively bargained agree-
41 ments in such city with substantially the same terms and conditions
42 relating to total compensation shall be considered as a single collec-
43 tively bargained agreement.

44 (d) "Home care aide" means a home health aide, personal care aide,
45 home attendant, personal assistant performing consumer directed personal
46 assistance services pursuant to section three hundred sixty-five-f of
47 the social services law, or other licensed or unlicensed person whose
48 primary responsibility includes the provision of in-home assistance with
49 activities of daily living, instrumental activities of daily living or
50 health-related tasks; provided, however, that home care aide does not
51 include any individual (i) working on a casual basis, or (ii) (except
52 for a person employed under the consumer directed personal assistance
53 program under section three hundred sixty-five-f of the social services
54 law) who is a relative through blood, marriage or adoption of: (1) the

1 employer; or (2) the person for whom the worker is delivering services,
2 under a program funded or administered by federal, state or local
3 government.

4 (e) "Managed care plan" means any managed care program, organization
5 or demonstration covering personal care or home health aide services,
6 and which receives premiums funded, in whole or in part, by the New York
7 state medical assistance program, including but not limited to all Medi-
8 caid managed care, Medicaid managed long term care, Medicaid advantage,
9 and Medicaid advantage plus plans and all programs of all-inclusive care
10 for the elderly.

11 (f) "Episode of care" means any service unit reimbursed, in whole or
12 in part, by the New York state medical assistance program, whether
13 through direct reimbursement or covered by a premium payment, and which
14 covers, in whole or in part, any service provided by a home care aide,
15 including but not limited to all service units defined as visits, hours,
16 days, months or episodes.

17 (g) "Cash portion of the minimum rate of home care aide total compen-
18 sation" means the minimum amount of home care aide total compensation
19 that may be paid in cash wages, as determined by the department in
20 consultation with the department of labor.

21 (h) "Benefit portion of the minimum rate of home care aide total
22 compensation" means the portion of home care aide total compensation
23 that may be paid in cash or health, education or pension benefits, wage
24 differentials, supplements in lieu of benefits and compensated time off,
25 as determined by the department in consultation with the department of
26 labor. Cash wages paid pursuant to increases in the state or federal
27 minimum wage cannot be used to satisfy the benefit portion of the mini-
28 mum rate of home care aide total compensation.

29 (i) "Fiscal intermediary" means a fiscal intermediary in the consumer
30 directed personal assistance program under section three hundred sixty-
31 five-f of the social services law.

32 2. Notwithstanding any inconsistent provision of law, rule or regu-
33 lation, no payments by government agencies shall be made to certified
34 home health agencies, long term home health care programs, managed care
35 plans, [~~the consumer directed personal assistance program under section~~
36 ~~three hundred sixty five f of the social services law~~] fiscal interme-
37 diaries, the nursing home transition and diversion waiver program under
38 section three hundred sixty-six of the social services law, or the trau-
39 matic brain injury waiver program under section [~~two thousand seven~~
40 ~~twenty-seven~~] hundred forty of this chapter for any episode of care
41 furnished, in whole or in part, by any home care aide who is compensated
42 at amounts less than the applicable minimum rate of home care aide total
43 compensation established pursuant to this section.

44 3. (a) The minimum rate of home care aide total compensation in a city
45 with a population of one million or more shall be:

46 (i) for the period March first, two thousand twelve through February
47 twenty-eighth, two thousand thirteen, ninety percent of the total
48 compensation mandated by the living wage law of such city;

49 (ii) for the period March first, two thousand thirteen through Febru-
50 ary twenty-eighth, two thousand fourteen, ninety-five percent of the
51 total compensation mandated by the living wage law of such city;

52 (iii) for the period March first, two thousand fourteen through March
53 thirty-first two thousand sixteen, no less than the prevailing rate of
54 total compensation as of January first, two thousand eleven, or the
55 total compensation mandated by the living wage law of such city, which-
56 ever is greater;

1 (iv) for all periods on or after April first, two thousand sixteen,
 2 the cash portion of the minimum rate of home care aide total compen-
 3 sation shall be ten dollars or the minimum wage as laid out in paragraph
 4 (a) of subdivision one of section six hundred fifty-two of the labor
 5 law, whichever is higher. The benefit portion of the minimum rate of
 6 home care aide total compensation shall be four dollars and nine cents.

7 (b) The minimum rate of home care aide total compensation in the coun-
 8 ties of Nassau, Suffolk and Westchester shall be:

9 (i) for the period March first, two thousand thirteen through February
 10 twenty-eighth, two thousand fourteen, ninety percent of the total
 11 compensation mandated by the living wage law as set on March first, two
 12 thousand thirteen of a city with a population of a million or more;

13 (ii) for the period March first, two thousand fourteen through Febru-
 14 ary twenty-eighth, two thousand fifteen, ninety-five percent of the
 15 total compensation mandated by the living wage law as set on March
 16 first, two thousand fourteen of a city with a population of a million or
 17 more;

18 (iii) for the period March first, two thousand fifteen, through Febru-
 19 ary twenty-eighth, two thousand sixteen, one hundred percent of the
 20 total compensation mandated by the living wage law as set on March
 21 first, two thousand fifteen of a city with a population of a million or
 22 more;

23 (iv) for all periods on or after March first, two thousand sixteen,
 24 the cash portion of the minimum rate of home care aide total compen-
 25 sation shall be ten dollars or the minimum wage as laid out in paragraph
 26 (b) of subdivision one of section six hundred fifty-two of the labor
 27 law, whichever is higher. The benefit portion of the minimum rate of
 28 home care aide total compensation shall be three dollars and twenty-two
 29 cents.

30 4. The terms of this section shall apply equally to services provided
 31 by home care aides who work on episodes of care as direct employees of
 32 certified home health agencies, long term home health care programs, or
 33 managed care plans, or as employees of licensed home care services agen-
 34 cies, limited licensed home care services agencies, or ~~[the consumer~~
 35 ~~directed personal assistance program under section three hundred sixty~~
 36 ~~five f of the social services law]~~ fiscal intermediaries, or under any
 37 other arrangement.

38 5. No payments by government agencies shall be made to certified home
 39 health agencies, licensed home care services agencies, long term home
 40 health care programs, managed care plans, ~~[or the consumer directed~~
 41 ~~personal assistance program under section three hundred sixty five f of~~
 42 ~~the social services law,]~~ fiscal intermediaries for any episode of care
 43 without the certified home health agency, licensed home care services
 44 agency, long term home health care program, managed care plan or the
 45 ~~[consumer directed personal assistance program]~~ fiscal intermediary,
 46 having delivered prior written certification to the commissioner annual-
 47 ly, at a time prescribed by the commissioner, on forms prepared by the
 48 department in consultation with the department of labor, that all
 49 services provided under each episode of care during the period covered
 50 by the certification are in full compliance with the terms of this
 51 section and any regulations promulgated pursuant to this section and
 52 that no portion of the dollars spent or to be spent to satisfy the wage
 53 or benefit portion under this section shall be returned to the certified
 54 home health agency, licensed home care services agency, long term home
 55 health care program, managed care plan, or fiscal intermediary, related
 56 persons or entities, other than to a home care aide as defined in this

1 section to whom the wage or benefits are due, as a refund, dividend,
2 profit, or in any other manner. Such written certification shall also
3 verify that the certified home health agency, long term home health care
4 program, or managed care plan has received from the licensed home care
5 services agency, fiscal intermediary, or other third party an annual
6 statement of wage parity hours and expenses on a form provided by the
7 department of labor accompanied by an independently-audited financial
8 statement verifying such expenses.

9 6. If a certified home health agency [~~or~~], long term home health care
10 program or managed care plan elects to provide home care aide services
11 through contracts with licensed home care services agencies, fiscal
12 intermediaries, or through other third parties, provided that the
13 episode of care on which the home care aide works is covered under the
14 terms of this section, the certified home health agency, long term home
15 health care program, or managed care plan [~~must obtain~~] shall include in
16 its contracts, a requirement that it be provided with a written certifi-
17 cation, verified by oath, from the licensed home care services agency,
18 fiscal intermediary, or other third party, on forms prepared by the
19 department in consultation with the department of labor, which attests
20 to the licensed home care services agency's, fiscal intermediary's, or
21 other third party's compliance with the terms of this section. Such
22 [~~certifications~~] contracts shall also obligate the licensed home care
23 services agency, fiscal intermediary, or other third party to provide
24 the certified home health agency, long term home health care program, or
25 managed care plan [~~to obtain, on no less than a quarterly basis,~~] all
26 information from the licensed home care services agency, fiscal interme-
27 diary or other third [~~parties~~] party necessary to verify compliance with
28 the terms of this section, which shall include an annual compliance
29 statement of wage parity hours and expenses on a form provided by the
30 department of labor accompanied by an independently-audited financial
31 statement verifying such expenses. Such annual statements shall be
32 available no less than annually for the previous calendar year, at a
33 time as prescribed by the commissioner. Such certifications [~~and~~], the
34 information [~~exchanged pursuant to them~~] necessary to verify compliance,
35 and the annual compliance statement and financial statements shall be
36 retained by all certified home health agencies, long term home health
37 care programs, or managed care plans, and all licensed home care
38 services agencies, fiscal intermediaries, or other third parties for a
39 period of no less than ten years, and made available to the department
40 upon request. Any licensed home care services agency, fiscal interme-
41 diary, or other third party who shall upon oath verify any statement
42 required to be transmitted under this section and any regulations
43 promulgated pursuant to this section which is known by such party to be
44 false shall be guilty of perjury and punishable as provided by the penal
45 law.

46 6-a. The certified home health agency, long term home health care
47 program, or managed care plan shall review and assess the annual compli-
48 ance statement of wage parity hours and expenses and make a written
49 referral to the department of labor for any reasonably suspected fail-
50 ures of licensed home care services agencies, fiscal intermediaries, or
51 third parties to conform to the wage parity requirements of this
52 section.

53 7. The commissioner shall distribute to all certified home health
54 agencies, long term home health care programs, managed care plans,
55 licensed home care services agencies, and fiscal intermediaries [~~in the~~
56 ~~consumer directed personal assistance program under section three~~

1 ~~hundred sixty five f of the social services law,~~] official notice of the
 2 minimum rates of home care aide compensation at least one hundred twenty
 3 days prior to the effective date of each minimum rate for each social
 4 services district covered by the terms of this section.

5 7-a. Any certified home health agency, licensed home care services
 6 agency, long term home health care program, managed care plan, or fiscal
 7 intermediary, or other third party that willfully pays less than such
 8 stipulated minimums regarding wages and supplements, as established in
 9 this section, shall be guilty of a misdemeanor and upon conviction shall
 10 be punished, for a first offense by a fine of five hundred dollars or by
 11 imprisonment for not more than thirty days, or by both fine and impris-
 12 onment; for a second offense by a fine of one thousand dollars, and in
 13 addition thereto the contract on which the violation has occurred shall
 14 be forfeited; and no such person or corporation shall be entitled to
 15 receive any sum nor shall any officer, agent or employee of the state
 16 pay the same or authorize its payment from the funds under his or her
 17 charge or control to any person or corporation for work done upon any
 18 contract, on which the certified home health agency, licensed home care
 19 services agency, long term home health care program, managed care plan,
 20 or fiscal intermediary, or other third party has been convicted of a
 21 second offense in violation of the provisions of this section.

22 8. The commissioner is authorized to promulgate regulations, and may
 23 promulgate emergency regulations, to implement the provisions of this
 24 section.

25 9. Nothing in this section should be construed as applicable to any
 26 service provided by certified home health agencies, licensed home care
 27 services agencies, long term home health care programs, managed care
 28 plans, or [~~consumer directed personal assistance program under section~~
 29 ~~three hundred sixty five f of the social services law~~] fiscal interme-
 30 diaries except for all episodes of care reimbursed in whole or in part
 31 by the New York Medicaid program.

32 10. No certified home health agency, managed care plan, or long term
 33 home health care program[~~, or fiscal intermediary in the consumer~~
 34 ~~directed personal assistance program under section three hundred sixty~~
 35 ~~five f of the social services law~~] shall be liable for recoupment of
 36 payments or any other penalty under this section for services provided
 37 through a licensed home care services agency, fiscal intermediary, or
 38 other third party with which the certified home health agency, long term
 39 home health care program, or managed care plan has a contract because
 40 the licensed agency, fiscal intermediary, or other third party failed to
 41 comply with the provisions of this section if the certified home health
 42 agency, long term home health care program, or managed care plan[~~, or~~
 43 ~~fiscal intermediary~~] has reasonably and in good faith collected certifi-
 44 cations and all information required pursuant to [~~subdivisions five and~~
 45 ~~six of~~] this section and conducts the monitoring and reporting required
 46 by this section.

47 § 1-a. Section 3614-c of the public health law is amended by adding a
 48 new subdivision 5-a to read as follows:

49 5-a. No portion of the dollars spent or to be spent to satisfy the
 50 wage or benefit portion under this section shall be returned to the
 51 certified home health agency, licensed home care services agency, long
 52 term home health care program, managed care plan, or fiscal interme-
 53 diary, related persons or entities, other than to a home care aide as
 54 defined in this section to whom the wage or benefits are due, as a
 55 refund, dividend, profit, or in any other manner.

1 § 2. Paragraph (a) of subdivision 1 and subdivisions 3 and 4 of
2 section 195 of the labor law, as amended by a chapter of the laws of
3 2020, amending the labor law relating to additional information provided
4 to employees on public work contracts, as proposed in legislative bills
5 numbers S. 7307 and A. 9000, are amended to read as follows:

6 (a) provide his or her employees, in writing in English and in the
7 language identified by each employee as the primary language of such
8 employee, at the time of hiring, a notice containing the following
9 information: the rate or rates of pay and basis thereof, whether paid by
10 the hour, shift, day, week, salary, piece, commission, or other; allow-
11 ances, if any, claimed as part of the minimum wage, including tip, meal,
12 or lodging allowances; the benefit portion of the minimum rate of home
13 care aide total compensation as defined in section thirty-six hundred
14 fourteen-c of the public health law ("home care aide benefits"), if
15 applicable; prevailing wage supplements, if any, claimed as part of any
16 prevailing wage or similar requirement pursuant to article eight of this
17 chapter; the regular pay day designated by the employer in accordance
18 with section one hundred ninety-one of this article; the name of the
19 employer; any "doing business as" names used by the employer; the phys-
20 ical address of the employer's main office or principal place of busi-
21 ness, and a mailing address if different; the telephone number of the
22 employer; plus such other information as the commissioner deems material
23 and necessary. Where such prevailing wage supplements are claimed, or
24 such home care aide benefits are provided, the notice shall identify,
25 for each type of supplement claimed or each type of home care aide bene-
26 fits provided: (i) the hourly rate claimed; (ii) the type of supple-
27 ment or type of home care aide benefits, including when applicable, but
28 not limited to, pension or healthcare; (iii) the names and addresses of
29 the person or entity providing such supplement or such home care aide
30 benefits; and (iv) the agreement, if any, requiring or providing for
31 such supplement or such home care aide benefits, together with informa-
32 tion on how copies of such agreements or summaries thereof may be
33 obtained by an employee. Each time the employer provides such notice to
34 an employee, the employer shall obtain from the employee a signed and
35 dated written acknowledgement, in English and in the primary language of
36 the employee, of receipt of this notice, which the employer shall
37 preserve and maintain for six years. Such acknowledgement shall include
38 an affirmation by the employee that the employee accurately identified
39 his or her primary language to the employer, and that the notice
40 provided by the employer to such employee pursuant to this subdivision
41 was in the language so identified or otherwise complied with paragraph
42 (c) of this subdivision, and shall conform to any additional require-
43 ments established by the commissioner with regard to content and form.
44 For all employees who are not exempt from overtime compensation as
45 established in the commissioner's minimum wage orders or otherwise
46 provided by New York state law or regulation, the notice must state the
47 regular hourly rate and overtime rate of pay;

48 3. furnish each employee with a statement with every payment of wages,
49 listing the following: the dates of work covered by that payment of
50 wages; name of employee; name of employer; address and phone number of
51 employer; rate or rates of pay and basis thereof, whether paid by the
52 hour, shift, day, week, salary, piece, commission, or other; gross
53 wages; deductions; allowances, if any, claimed as part of the minimum
54 wage; the benefit portion of the minimum rate of home care aide total
55 compensation as defined in section thirty-six hundred fourteen-c of the
56 public health law ("home care aide benefits"), if applicable; prevailing

1 wage supplements, if any, claimed as part of any prevailing wage or
2 similar requirement pursuant to article eight of this chapter; and net
3 wages. Where such prevailing wage supplements are claimed, or such home
4 care aide benefits are provided, the statement shall either: (i) identi-
5 fy the type of each supplement claimed, or the type of each home care
6 aide benefits provided, and the hourly rate for each; or (ii) be accom-
7 panied by a copy of the applicable notice required under subdivisions
8 one and two of this section. For all employees who are not exempt from
9 overtime compensation as established in the commissioner's minimum wage
10 orders or otherwise provided by New York state law or regulation, the
11 statement shall include the regular hourly rate or rates of pay; the
12 overtime rate or rates of pay; the number of regular hours worked, and
13 the number of overtime hours worked. For all employees paid a piece
14 rate, the statement shall include the applicable piece rate or rates of
15 pay and number of pieces completed at each piece rate. Upon the request
16 of an employee, an employer shall furnish an explanation in writing of
17 how such wages were computed;

18 4. establish, maintain and preserve for not less than six years
19 contemporaneous, true, and accurate payroll records showing for each
20 week worked the hours worked; the rate or rates of pay and basis there-
21 of, whether paid by the hour, shift, day, week, salary, piece, commis-
22 sion, or other; gross wages; deductions; allowances, if any, claimed as
23 part of the minimum wage; the benefit portion of the minimum rate of
24 home care aide total compensation as defined in section thirty-six
25 hundred fourteen-c of the public health law ("home care aide benefits"),
26 if applicable; prevailing wage supplements, if any, claimed as part of
27 any prevailing wage or similar requirement pursuant to article eight of
28 this chapter; and net wages for each employee. Where such prevailing
29 wage supplements are claimed, or such home care aide benefits are
30 provided, the payroll records shall include copies of all notices
31 required by subdivisions one and two of this section. For all employees
32 who are not exempt from overtime compensation as established in the
33 commissioner's minimum wage orders or otherwise provided by New York
34 state law or regulation, the payroll records shall include the regular
35 hourly rate or rates of pay, the overtime rate or rates of pay, the
36 number of regular hours worked, and the number of overtime hours worked.
37 For all employees paid a piece rate, the payroll records shall include
38 the applicable piece rate or rates of pay and number of pieces completed
39 at each piece rate;

40 § 3. This act shall take effect immediately; provided, however, that
41 sections one and two of this act shall take effect on October 1, 2020,
42 provided, however, that if a chapter of the laws of 2020, amending the
43 labor law relating to additional information provided to employees on
44 public work contracts, as proposed in legislative bills numbers S. 7307
45 and A. 9000, shall not have taken effect on or before such date, then
46 section two of this act shall take effect on the same date and in the
47 same manner as such chapter of the laws of 2020 takes effect; provided
48 further, however, that the director of the budget may, in consultation
49 with the commissioner of health, delay the effective date prescribed
50 herein for a period of time which shall not exceed ninety days following
51 the conclusion or termination of an executive order issued pursuant to
52 section 28 of the executive law declaring a state disaster emergency for
53 the entire state of New York, upon such delay the director of the budget
54 shall notify the chairs of the assembly ways and means committee and
55 senate finance committee and the chairs of the assembly and senate
56 health committees; provided further, however, that the director of the

1 budget shall notify the legislative bill drafting commission upon the
2 occurrence of a delay in the effective date of this act in order that
3 the commission may maintain an accurate and timely effective data base
4 of the official text of the laws of the state of New York in furtherance
5 of effectuating the provisions of section 44 of the legislative law and
6 section 70-b of the public officers law.

7

PART PP

8 Section 1. The social services law is amended by adding a new section
9 364-n to read as follows:

10 § 364-n. Diabetes and chronic disease self-management pilot program.
11 The commissioner of health may establish a diabetes and chronic disease
12 self-management pilot program in one or more counties or regions of the
13 state for the purpose of improving clinical outcomes. Payments under
14 such program may be made for education, consultation, and peer support
15 services for persons with chronic health conditions, as defined by the
16 commissioner, to be eligible to receive such services. The commissioner
17 is authorized to establish fees for such counseling services, subject to
18 the approval of the director of the division of the budget. The
19 provisions of this section shall not take effect unless all necessary
20 approvals under federal law and regulation have been obtained to receive
21 federal financial participation for the costs of services provided under
22 this section.

23 § 2. Section 367-r of the social services law, as amended by section
24 58-a of part A of chapter 57 of the laws of 2006, subdivision 1-a as
25 amended by section 10 of part C of chapter 109 of the laws of 2006, is
26 amended to read as follows:

27 § 367-r. Private duty nursing services worker recruitment and
28 retention program. 1. (a) The commissioner of health, with the approval
29 of the director of the budget, shall establish fees for the reimburse-
30 ment of private duty nursing services.

31 (b) The commissioner of health shall, subject to the provisions of
32 paragraph (b) of subdivision two of this section and to the availability
33 of federal financial participation, increase medical assistance rates of
34 payment by three percent for services provided on and after December
35 first, two thousand two, for private duty nursing services for the
36 purposes of improving recruitment and retention of private duty nurses.

37 ~~[1-a.]~~ 2. Medically fragile children. (a) In addition, the commission-
38 er shall further increase rates for private duty nursing services that
39 are provided to medically fragile children to ensure the availability of
40 such services to such children. In establishing rates of payment under
41 this subdivision, the commissioner shall consider the cost neutrality of
42 such rates as related to the cost effectiveness of caring for medically
43 fragile children in a non-institutional setting as compared to an insti-
44 tutional setting. Medically fragile children shall, for the purposes of
45 this subdivision, have the same meaning as in subdivision three-a of
46 section thirty-six hundred fourteen of the public health law. Such
47 increased rates for services rendered to such children may take into
48 consideration the elements of cost, geographical differentials in the
49 elements of cost considered, economic factors in the area in which the
50 private duty nursing service is provided, costs associated with the
51 provision of private duty nursing services to medically fragile chil-
52 dren, and the need for incentives to improve services and institute
53 economies and such increased rates shall be payable only to those
54 private duty nurses who can demonstrate, to the satisfaction of the