



ANDREW M. CUOMO
Governor

Department of Health

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

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

October 28, 2016

Dear Administrator Letter - Minimum Wage Fiscal Policy/Implementation Guidelines

- The Department will add increased funding for minimum wage compliance uniformly to the MLTC/MMC regional rate and this adjustment will be risk adjusted.
- The increased funding for calendar year 2017, which when combined with other wage trend, shall total \$1.33/hr for MLTC Partial Cap NYC; (it may differ for other managed care programs or regions), was based on the total number of hours worked by direct care employees and calculated consistent with State statutes and further assumed that reimbursement rates to providers would not be decreased to supplement base wage increases
- Effective January 1, 2017, MCOs shall supplement their contracted reimbursement rates for providers which shall utilize the \$1.33 of additional funds to pay the full increment of the additional statutory wage cost, as identified by DOH, for direct care workers. The aggregate additional funds paid to MCOs shall be paid out entirely to providers and subsequently to workers for appropriate statutory wage obligations (including the direct salary costs and related fringe benefits of minimum wage and wage parity amounts). However, this does not obligate an MCO to give every provider a \$1.33/hour increase in additional reimbursement which allows MCOs to allocate total minimum wage resources appropriately based on provider network need. MCOs cannot use any of these additional funds for any purpose other than appropriate statutory wage obligations directly associated to the minimum wage increase and shall reserve unspent funds to be returned to the State in the next reimbursement cycle through a rate adjustment or some other mechanism, as determined by the Department of Health. MCOs shall report on the use of these additional funds to pay appropriate statutory wage obligations to providers, including a balance of payments, on a quarterly basis.
- MCO-provider contract amendments should specify that the increase in reimbursement rates is to supplement existing contract rates in order to enable the provider to fund the appropriate statutory increase to minimum wage and to enable the provider to remain compliant with wage parity. The Department of Labor will be responsible for ensuring that providers are paying workers in compliance with these statutory wage requirements. Additionally, the Department of Health will convene a stakeholder workgroup prior to November 15th to agree upon an attestation form and method that will be required for the current and future payments and will provide further guidance regarding various compliance/enforcement issues (inc. attestation requirements). If stakeholder agreement cannot be reached on an appropriate attestation form or method, then the Department of Health will select a form and method to apply.

- To this end, and in compliance with the appropriation language included in the SFY 2016-17 Budget, which states: “Each eligible organization...may be required to submit written certification... attesting to the total amount of funds used by the eligible organization, how such funding will be or was used for purposes eligible under these appropriations and any other reporting deemed necessary by the commissioner.” the Department intends to issue minimum wage cost report modifications to ensure dollars were used appropriately. Dollars that were used inappropriately will be returned to the State through a future rate adjustment or some other mechanism, as determined by the Department of Health, in the next rate cycle. The Department will use this cost report data and other reported data to develop future minimum wage reimbursement rates. The Department reserves the right to request any additional data necessary to assist with the development of these future minimum wage reimbursement rates.
- The Department recommends that contract amendments be sent to providers no later than November 15, 2016. If providers do not execute the contract amendment, then the MCO is not responsible for paying an increase in the contracted rate until such time as the contract is executed and returned to the MCO. If a dispute arises over whether the contracted increase for wages between the provider and the MCO is consistent with these Guidelines, providers or MCOs may seek the Department’s guidance.
- OMIG will also conduct audits of MCOs and providers to ensure that payments were made in accordance with statutory requirements and the method discussed above. MCOs and providers shall maintain all records and reports required to verify that appropriate salary increases directly associated with the minimum wage increase were made and shall present them to OMIG upon request.



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MINIMUM WAGE RATE SETTING AND RECONCILIATION

- The SFY 2017-18 Budget includes appropriation language which states: that funding “...shall support direct salary costs and related fringe benefits” and that “Each eligible organization...may be required to submit written certification... attesting to the total amount of funds used by the eligible organization, how such funding will be or was used for purposes eligible under these appropriations and any other reporting deemed necessary by the commissioner.”
- To this end, in FFS (hospital, NH, etc.) the Department conducted a survey to capture the resources needed for hours worked below the minimum wage amount of \$11 per hour. These results were attested to (consistent with statute) and used in the rate development methodology.
- For the Home Care sector, the Department will release a similar survey in mid-December with a 3-4 week turnaround. This will be used to verify the accuracy of the current DOH/industry estimate. The results will be included in the April 2017 rates, including any necessary reconciliation of State funds.
- In March 2017, an additional survey (3-4 week turnaround) will be issued to all sectors to estimate the out year impacts of the minimum wage, including subsequent year incremental increases for Financial Plan purposes.
- For future rate periods, cost report data will be used to determine reimbursement rates.

Final Reconciliation Process

- To verify that resources included in the rates were utilized specifically for minimum wage, a supplemental cost report will be released in the last quarter of each calendar year and due back to the Department by the subsequent April for inclusion in the next rate cycle. This supplemental cost report will include sufficient detail to verify provider wage scale and the specific wage related fringe benefits and establish future reimbursement rates. Any necessary reconciliations (up or down) will be made in reimbursement rates for the next rate cycle.
- Unused funds or funds that were determined to be used inappropriately will be returned to the State Financial Plan/General Fund through an adjustment in Medicaid transfers, within the State fiscal year and at a time determined appropriate by the Division of the Budget.

- DOH/OMIG/DOL will have responsibility for reviewing, auditing and enforcing the payment of the direct salary costs and related fringe benefits associated with the minimum wage increase -- including reviewing the attested to survey and cost report data.