

Compounded Trend to Cost of Living Adjustments (COLAs) for Direct Care Workers

Effective date: 3/8/17

Pursuant to the authority vested in the Commissioner of Health by section 201 of the Public Health Law, section 43.02 of the Mental Hygiene Law, and Section 2 of Part I of Chapter 60 of the Laws of 2014, Subpart 86-10 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subparagraph (xi) of paragraph (1) of subdivision (c) of Section 86-10.3 is amended to read as follows:

(xi) Provider average general and administrative component, which shall mean the sum of insurance-general and agency administration allocation for the base year for a provider, such sum to be divided by (the sum of total program/site costs and other than to/from transportation allocation less the sum of food, repairs and maintenance, utilities, expensed equipment, household supplies, telephone, lease/rental equipment, depreciation equipment, [insurance – property and casualty,] total property-provider paid, housekeeping and maintenance staff, salaried clinical dollars, and contracted clinical dollars for the base year for a provider). The provider average direct care hourly rate-excluding general and administrative, as computed in subparagraph (x) of this paragraph, shall then be divided by (one minus the applicable provider average general and administrative quotient), from which

the provider average direct care wage hourly rate-excluding general and administrative, as computed in subparagraph (x) of this paragraph, shall be subtracted.

Subparagraph (xi) of paragraph (1) of subdivision (d) of Section 86-10.3 is amended to read as follows:

(xi) Provider average general and administrative component, which shall mean the sum of insurance-general and agency administration allocation for the base year for a provider, such sum to be divided by (the sum of total program/site costs and other than to/from transportation allocation less the sum of food, repairs and maintenance, utilities, expensed equipment, household supplies, telephone, lease/rental equipment, depreciation equipment, [insurance – property and casualty,] total property-provider paid, housekeeping and maintenance staff, salaried clinical dollars, and contracted clinical dollars for the base year for a provider). The provider average direct care hourly rate-excluding general and administrative, as computed in subparagraph (x) of this paragraph, shall then be divided by (one minus the applicable provider average general and administrative quotient), from which the provider average direct care wage hourly rate-excluding general and administrative, as computed in subparagraph (x) of this paragraph, shall be subtracted.

Subparagraph (xi) of paragraph (1) of subdivision (e) of Section 86-10.3 is amended to read as follows:

(xi) Provider average general and administrative component, which shall mean the sum of insurance-general and agency administration allocation for the base year for a provider, such sum to be divided by (the sum of total program/site costs and other than to/from transportation allocation less the sum of food, repairs and maintenance, utilities, expensed equipment, household supplies, telephone, lease/rental equipment, depreciation equipment, [insurance – property and casualty,] total property-provider paid, housekeeping and maintenance staff, salaried clinical dollars, and contracted clinical dollars for the base year for a provider). The provider average direct care hourly rate-excluding general and administrative, as computed in subparagraph (x) of this paragraph, shall then be divided by (one minus the applicable provider average general and administrative quotient), from which the provider average direct care wage hourly rate-excluding general and administrative, as computed in subparagraph (x) of this paragraph, shall be subtracted.

Subparagraph (ii) of paragraph (3) of subdivision (b) of Section 86-10.5 is amended to read as follows:

(ii) April 1, 2015 increase. In addition to the compensation funding effective January 1, 2105, providers that operate supervised IRAs, including supervised community residences, supportive IRAs,

including supportive community residences, and group day habilitation will receive a compensation increase targeted to direct support professional and clinical employees to be effective April 1, 2015. The compensation increase funding will be inclusive of associated fringe benefits. The April 1, 2015 direct support professionals compensation funding will be [the same, on an annualized basis, as that] compounded on the amount which was calculated for the January 1, 2105 compensation increase and will be an augmentation to the January 1, 2105 increase.

Paragraph (d) of Section 86-10.8 is amended to read as follows:

(d) April 1, 2015 increase. In addition to compensation funding effective January 1, 2105, the fees for specialized template population funding will revised to incorporate funding for a compensation increase to direct support professional and clinical employees to be effective April 1, 2015. The April 1, 2015 direct support compensation funding will be [the same, on an annualized basis, as that] compounded on the amount which was calculated for the January 1, 2015 compensation increase and will be an augmentation to the January 1, 2015 increase.

NOTICE OF CONSENSUS RULEMAKING

Statutory Authority:

Public Health Law Section 201, Mental Hygiene Law Section 43.02 and Section 2 of Part I of Chapter 60 of the Laws of 2014

Basis:

There are two types of technical amendments proposed. The first amendment, to various subdivisions of 10 NYCRR Part 86-10.3 removes the insurance-property and casualty subcomponent from the Provider Average General and Administrative component. The removal of the insurance-property and casualty subcomponent does not impact provider reimbursement, as the amounts intended to be reimbursed by such subcomponent are in fact reimbursed by other subcomponents within the Provider Average General and Administrative component. The inclusion of the insurance-property and casualty subcomponent within the Provider Average General and Administrative component was an error and has never been reimbursed.

The second amendment, made to 10 NYCRR Part 86-10.5 and 10 NYCRR Part 86-10.8 are clarifications that the two percent cost of living adjustment mandated by Section 2 of Part I of Chapter 60 of the Laws of 2014 are to be compounded annually. The compounding of such cost of living adjustment is mandated by such statute.

JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities.