

New York State to Fund Bonuses for Certain Health Care Workers as Part of State Budget

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As part of the [Fiscal Year 2023 New York state Executive Budget legislation](#), \$1.2 billion in funding has been allocated for the payment of bonuses for certain “frontline” healthcare workers.

With the stated goals to “recruit, retain, and reward health care and mental hygiene workers,” the provision – located within [Part D of the Health and Mental Hygiene Bill, as amended](#) – requires the state Commissioner of Health, in consultation with the state Commissioner of Labor and the Medicaid inspector general, to develop procedures to facilitate payment of claims to covered employers for the purpose of funding worker bonuses in accordance with the provision’s requirements. Bonus amounts will be commensurate with the number of hours worked by covered workers during designated vesting periods up to a total of \$3,000 per covered worker.

Covered Employers

Covered employers are defined as providers with at least one employee and that bill for services under the state Medicaid plan or a home or community based services (HCBS) waiver, or that have a provider agreement to bill for services provided or arranged through a managed care organization or a managed long term care plan, as well as certain educational institutions and other funded programs. These include certain providers, facilities, pharmacies and school-based health centers licensed under the state Public Health Law, Mental Hygiene Law, and Education Law, as well as certain programs funded by the Office of Mental Health, Office for the Aging, Office of Addiction Services and Supports, and the Office for People with Developmental Disabilities.

Covered Workers

Covered workers are defined as “certain front line health care and mental hygiene practitioners, technicians, assistants and aides that provide hands on health or care services to individuals” receiving an annualized base salary (excluding any bonuses or overtime pay) of \$125,000 or less, and include full-time, part-time, and temporary employees as well as independent contractors. Specific eligible job titles are as determined by a list developed by the Commissioner of Health in consultation with the commissioners of other related state departments.

Determining Bonus Eligibility and Amounts

Bonuses will be required to be paid based on the number of hours worked by a covered worker during defined vesting periods to be determined by the state Commissioner of Health. The vesting periods shall be up to two (per covered employer) six-month periods between October 1, 2021 and March 31, 2024 for which workers that are continuously employed by an employer during such six-month periods may become eligible for a bonus. The use of any accruals or other leave, including but not limited to sick, vacation, or time used under the federal Family and Medical Leave Act (FMLA), shall be credited towards and included in the calculation of the average number of hours worked per week over the course of the vesting periods.

Total bonus payments shall not exceed \$3,000 per covered worker (across all covered employers of the worker) and shall be determined as follows:

- workers averaging at least 20 but less than 30 hours per week over the course of a vesting period would receive a \$500 bonus for the vesting period;
- workers averaging at least 30 but less than 35 hours per week over the course of a vesting period would receive a \$1,000 bonus for the vesting period;
- workers averaging at least 35 hours per week over the course of a vesting period would receive a \$1,500 bonus for the vesting period; and
- full-time employees who are exempt from overtime compensation as established in the New York minimum wage orders or otherwise provided by New York state law over the course of a vesting period would receive a \$1,500 bonus for such vesting period (it is noted that the statute does not specify a minimum number of hours required to be worked per week in order for exempt employees to qualify).

Covered employers are obligated to pay bonuses to eligible employees in accordance with the vesting schedule to be established by the Department of Health, although such payments need not be paid until 30 days after the claimed amount is paid out to the employer by the Department, “provided . . . that prior to such date the employee does not terminate, through action or inaction, the employment relationship with the employer.” Covered employers shall be required to submit a claim for payment – using forms and processes to be developed by the Commissioner of Health – no later than 30 days after a worker’s eligibility for a bonus vests. Bonus payments may not be used to reduce total compensation otherwise due to covered workers.

No bonus amount may be paid to any worker who has been suspended or excluded under the Medicaid program during the vesting period and at the time an employer submits a claim.

Covered Employer Tracking and Recordkeeping

Covered employers will be tasked with determining eligibility for the bonuses and will be required to track the number of hours worked by covered workers during the vesting periods and, as applicable, the number of patients served by the employer who are eligible to receive services under Article 5, Title 11 of the New York Social Services Law. As noted above, they will then need to submit claims for payment of bonuses in accordance with the schedule and processes to be established by the Department of Health. Covered employers will be required to retain records of claims and substantiating documentation for a period of no less than six years.

The Medicaid inspector general, in coordination with the Commissioner of Health, shall be authorized to conduct audits, investigations, and reviews of employers required to submit claims under the provision. Inappropriately paid claims shall constitute overpayments as defined in the Medicaid regulations and may be recovered accordingly from the employer without recoupment from, or penalty to, any covered worker.

Sanctions up to and including exclusion from the Medicaid program, as well as other penalties or actions authorized by law, also may be imposed for improperly paid claims as well as: (i) claims for bonuses not due or not actually paid out to covered workers; (ii) claims in an amount in excess of correct bonus amounts; or (iii) failure to claim a bonus due to a covered worker. A covered employer who fails to identify, claim and pay any bonus for more than 10% of workers eligible for the bonus shall also be subject to additional penalties.

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