
GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION

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21-06

TO: ALL MEMBER FACILITIES

FROM: MICHAEL A.L. BALBONI, ESQ., EXECUTIVE DIRECTOR
ROBIN C. ROSEN, ESQ., LABOR COUNSEL

DATE: JANUARY 25, 2021

RE: DECEMBER 1, 2020 3% WAGE INCREASE – RESOLUTION AND
RELATED RELIEF

IMPORTANT

As we notified you back in November 2020, GNYHCFA and other nursing home Associations had filed a subject to reimbursement claim regarding the December 1, 2020 3% wage increase. Based on this claim, facilities did not implement the increase. At the request of the Union, Governor Cuomo became personally interested in the resolution of this issue. As a result, an expedited discussion between the management attorneys, Union and Impartial Chairman Martin Scheinman was conducted on Sunday. At this meeting we reiterated the basis for our subject to claim, specifically the State's 1.5% rate reduction, low census and costs associated with the pandemic including PPE and testing. The union's response was to reiterate the risk and loss of their members during the pandemic.

It is important to remember that as per the collective bargaining agreement, a subject to reimbursement claim is an individualized one, with each facility proving they are unable to pay all or part of the wage increase. Facilities would have to hire a financial consultant, open their books and prove inadequate reimbursement. Historically, we know this is a very hard burden to

meet. Additionally, it does not benefit our industry to have non-uniform rates of pay among nursing homes.

We all recognize that the workers have performed heroic and essential services during the pandemic. After a full discussion, the parties agreed that facilities should implement the 3% wage increase, retroactive to December 1, 2020. We also agreed that at this time, this 3% would NOT be subject to Funds contributions. We believe this is a good resolution of the issue as it gives us certain relief without having to go through an intensive subject to reimbursement analysis. Impartial Chairman Scheinman will be issuing an Award directing an interim moratorium on Funds contributions related to the 3% wage increase.

We are recommending this resolution for the following reasons:

- Without this resolution, your only remedy is to proceed to a subject to reimbursement claim and the Impartial Chairman has made it very clear that such a claim would be a difficult one to win. There will be a heightened level of scrutiny related to your claim. Further, as per the contractual subject to language, you would have to pay now what you can, including Fund contributions, and open your books to the union and Impartial Chairman as evidence of your claim. If you do not agree to this resolution, you would not be eligible to take the relief under the Impartial Chairman's Award.
- The current CBA expires September 2021, so we do not have much time left and this resolution gives you relief related to the Fund contributions without having to prove any financial distress.
- The personal involvement of the Chief Executive of NYS changes the dynamic. The regulatory relationship with the State can become more punitive than it is now. In addition, we will be looking for a way to get the 1.5% that was cut reinstated and need a good working relationship with the State to be successful.
- We must also recognize our industry is currently not seen in the best light. Having a job action because we did not pay a wage increase that was agreed to prior to the pandemic would put us in an even worse light. For these reasons, we encourage all facilities to give the 3% wage increase as detailed above.

Under this agreement, this 3% wage increase should be paid in this week's payroll. The retroactive portion must be paid within 30 days. Impartial Chairman Scheinman will be issuing his Award in short order. We believe this collaborative effort between the parties was the best resolution under the

circumstances. Any facility who still wants to proceed with a subject to claim should notify us immediately.

Thank you.