

**Howard S. Weitzman**  
**Comptroller**

Elizabeth Botwin  
Chief Deputy Comptroller

Aline Khatchadourian  
Deputy Comptroller  
for Audit & Special Projects



**OFFICE OF THE COMPTROLLER**

240 Old Country Road  
Mineola, New York 11501  
Tel: (516) 571-2386  
Fax: (516) 571-5900  
Nccomptroller @nassaucountyny.gov

July 30, 2009

Ms. Elaine Schwartz, President  
A&B Health Care Services, Inc.  
99 North Broadway, 2<sup>nd</sup> Floor  
Hicksville, NY 11801-2938

Re: Limited Audit of A&B Health Care Services, Inc. Compliance with the Nassau County Living Wage Law

Dear Ms. Schwartz:

A limited compliance audit was performed of contract #CQSS07000132 between A&B Health Care Services, Inc. (“A&B”) and Nassau County. The objective of this audit was to determine whether A&B was in compliance with the Nassau County Living Wage Law (“Law”) and the related Rules. The review period was calendar year 2007. Certain tests were also performed to review subsequent transactions. To accomplish our objective, we reviewed A&B’s pertinent books and records, performed certain tests and interviewed key personnel.

Based on our limited audit, our findings and recommendations are as follows:

**Audit Finding (1)**

**Compensated Days Off**

A&B did not provide its covered employees with compensated days off in accordance with the Law. The Law requires employers to provide “no fewer than twelve paid days off per year for sick leave, vacation or personal necessity at the employee’s request. Full-time employees shall accrue such leave at a rate of one day per month of full-time employment. Part-time employees who work twenty or more hours per week shall accrue such leave in increments proportional to the rate of accrual for full-time employees.”<sup>1</sup>

---

<sup>1</sup> “Nassau County Living Wage Law,” Nassau Co. Misc. Laws, Title 57, § 3 (2007). The Law and the related rules can be found on the Comptroller’s website, at <http://www.nassaucountyny.gov/agencies/Comptroller/LivingWage/index.html>.

A&B did not institute a specific policy to provide the mandated compensated days off to covered employees. It also did not inform employees of their entitlement to such time off. Some employees were provided vacation pay-outs, based on A&B's corporate practices, but most of the employees covered under the Law did not receive paid accrued time off.

In order to address this audit finding, A&B provided us with a proposed Time-Off Policy. A&B's proposed policy is not compliant with the Law because employees forfeit unused accrued time at the end of each calendar year, or in the event of an employee's termination, whether it is voluntary or involuntary. Under the Law, accrued time must be made available to the employees, and unused days may not be forfeited.

In response to our audit request, A&B provided us with an analysis showing that it owes certain covered employees a total of 2,358 hours compensated leave, or a dollar equivalent of \$25,946. We tested A&B's analysis and did not find any exceptions.

Additionally, we found that vacation hours were paid at rates lower than those mandated. The accrued leave schedule provided by A&B showed that eight employees were paid for vacation in 2007. Our testing disclosed that seven of them had been paid at rates ranging from \$.25 to \$1.50 per hour below the required living wage rate. The total amount of these underpayments was \$121.

### **Audit Recommendations**

A&B should formulate and institute a policy for providing compensated days off to its employees. This policy should be communicated to all covered employees in accordance with the Comptroller's Rules so that they are aware of their rights and entitlements under the Law.

For calendar year 2007, A&B should identify all under-payments made for compensated days off, calculate the amount owed to each employee, provide the auditors with copies of the calculations, and make the necessary payments to affected employees. In instances where days off cannot be provided (i.e. employee has been terminated), cash compensation should be made at the mandated rate.

A&B should disburse \$121 to the employees identified in the audit who were paid for their vacation hours at rates below the applicable mandated rate.

### **Audit Finding (2)**

#### **Living Wage Rate**

A&B did not pay the hourly wage rate required by the Law. The Law requires that "Employers shall pay their employees no less than the living wage for each hour they perform County work and either provide them benefits or supplement their hourly wage rate by an amount no less than the benefits supplement rate."<sup>2</sup> During the audit period, the living wage rate was \$ 9.50 and benefit supplement was

---

<sup>2</sup> "Nassau County Living Wage Law," Nassau Co. Misc. Laws, Title 57 (2007) § 3a

\$1.50 per hour, aggregating to \$11.00 per hour. As A&B did not provide any benefits, it was required to pay a combined rate of \$11.00 per hour.

Our testing of two pay periods disclosed that most of the covered employees were paid less than the required rate. In one pay period, we tested 19 employees out of a population of 48 and found that 17 (89%) were underpaid. In the other pay period, 18 were tested and 13 (72%) were underpaid. The underpayments ranged from \$0.27 to \$2.00 per hour. For the two pay periods tested, the amount of underpayments totaled \$572. Considering the high percentage of employees who were underpaid, it is quite likely that there were other employees who were also underpaid.

### **Audit Recommendations**

A&B should:

- a) inform covered employees of their entitlement to the required rate of pay;
- b) identify all the under-payments;
- c) calculate the underpayments of wages that are owed to each of its covered employees and pay them immediately; and
- d) provide us with documentation evidencing the process of identifying all underpayments and the corrective payments made.

\*\*\*\*\*

The matters covered in this report have been discussed with the officials of A&B during the course of this audit, as well as at an exit conference held on June 9, 2009. On May 14, 2009, our Office submitted a report in draft for A&B's comments. A&B provided its comments on May 26, 2009. Subsequent to the exit conference, A&B provided a revised response, received on June 15, 2009, and a follow-up letter, received on June 19, 2009, which are included as an appendix to this report.



Writer's Direct Dial: (516) 663-6554  
Writer's Direct Fax: (516) 663-6754  
Writer's E-mail: jschlossberg@rmfpc.com

May 26, 2009

By Fax and Regular Mail

Ms. Aline Khatchadourian  
Deputy Comptroller  
Office of the Comptroller  
240 Old Country Road  
Mineola, NY 11501

Re: A&B Health Care Services Inc.

Dear Ms. Khatchadourian:

We represent A&B Health Care Services Inc. ("A&B"). On behalf of A&B, we write with comments on the draft report dated May 14, 2009. Our comments are as follows:

Compensated Days Off:

1. With regard to the "three covered employees" who were "omitted from the schedule" please identify the names of the employees, as it is possible that perhaps these were employees not assigned to Medicaid cases (A&B does serve some private clients) and therefore not covered under the Living Wage Law.
2. With regard to the two employees who "were not properly credited for all the hours worked" please identify such employees so that A&B may correct the errors and compensate the employees accordingly.
3. You state that A&B's Time-Off Policy is "not compliant with the Law because employees forfeit unused accrued time" at the end of the year or upon termination. We disagree with your conclusion on this point. The Nassau County Living Wage Law does not contain any provision expressly stating that accrued time cannot be forfeited at year-end or upon termination of employment. Vacation pay is not considered wages under the New York State Labor Law and

May 26, 2009  
Page 2



thus there is no authority to conclude that it is similar to wages under the Nassau County Law. Indeed, the absence of such a provision in the Nassau County Law means that such a provision cannot be imposed by the Comptroller (which only the County Legislature can do by amending the law). Further, the section of the Nassau County Law speaks only in terms of days off. Thus, employees are entitled to days off, not pay in lieu of days off at year-end or on termination.

Our position is consistent with the interpretation of the New York State Labor Law by the courts and the New York State Department of Labor in connection with vacation policies in the general workforce. Specifically, it has been held by a New York appellate court that it is acceptable for an employer to maintain a policy providing for the forfeiture of vacation pay so long as the employees were aware of the policy. *Glenville Gage Co., Inc. v. Industrial Board of Appeals*, 70 A.D.2d 283 (3<sup>rd</sup> Dept. 1979), *affd.*, 52 N.Y.2d 777 (1980).

4. With regard to the recommendation that A&B “identify all under-payments made for compensated days off,” we note that A&B paid its employees a total of \$35,518 in the form of travel expenses for the period of 2007. A&B is entitled to credit this additional compensation to which the employees were not otherwise entitled against any alleged under-payment for compensated days off. Any employee who notwithstanding the travel expenses paid to them has not been paid the required amount will be paid the difference.

5. With regard to communicating the Time Off Policy, the policy was distributed to all employees in September 2008.

Living Wage Rate:

1. With regard to the three covered employees that were “omitted from the schedule”, please identify their names, as it is possible that these were employees not assigned to Medicaid cases and therefore not covered under the Living Wage Law.

2. With regard to the two employees who “were not properly credited for all the hours they worked,” please identify these employees so that A&B may correct the alleged omissions and compensate the employees accordingly.

3. With regard to vacation pay being paid at rates lower than those mandated, A&B records reveal that the employees on the list provided previously were compensated a total of \$11,606 for travel expenses. A&B is entitled to credit this additional compensation to which the employees were not otherwise entitled against any alleged underpayment.

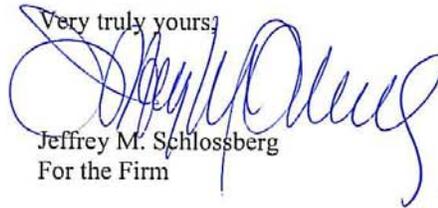
Appendix

---

May 26, 2009  
Page 3



In addition to the foregoing, we hereby request an Exit Conference to discuss the preliminary audit findings. Please let us know if you have any questions.

Very truly yours,  
  
Jeffrey M. Schlossberg  
For the Firm

JMS:sbs

cc: A&B Health Care Services Inc.

#455602

**Auditor's Follow-up Response**

*The names of the employees requested by A&B were provided and A&B provided evidence that the employees in question were not covered employees. As such, the report was modified.*

*The Comptroller's Office reconfirms its position that A&B's policy that employees must use their compensated days off or forfeit them at the end of the year is impermissible under the Living Wage Law.*

*We do not agree with A&B's contention that payment of travel expenses can be substituted for payment of wages. Reimbursement of an expense incurred by employees in performance of their duties is not considered wages or benefits.*

*We reiterate our audit recommendations.*



Writer's Direct Dial: (516) 663-6554  
Writer's Direct Fax: (516) 663-6754  
Writer's E-mail: jschlossberg@rmfpc.com

June 15, 2009

By Fax and Regular Mail

Ms. Aline Khatchadourian  
Deputy Comptroller  
Office of the Comptroller  
240 Old Country Road  
Mineola, NY 11501

Re: A&B Health Care Services Inc.

Dear Ms. Khatchadourian:

We represent A&B Health Care Services Inc. ("A&B"). On behalf of A&B, we write as a supplement to our letter dated May 26 and as a follow-up to the Exit Conference conducted on June 9, 2009.

**Threshold Legal Issues**

*The Living Wage Law Impermissibly Diminishes Medicaid Reimbursement Rate*

Initially, Article 36 of the New York State Public Health Law and corresponding Regulations of the Commissioner of Health set forth the rules and procedure by which Medicaid reimbursement rates are set for a licensed home care services agency such as A&B. Specifically, Article 36 states that the Commissioner of Health is required to set rates that are "reasonably related to the costs of the efficient production of such services." The Commissioner is to take into account "the elements or cost, geographical differentials in the elements of cost considered, economic factors in the area" in which the home health agency is located "and the need for incentives to improve services and institute economies." In making its determination as to the appropriate rate, including for 2007, the State took into account A&B's actual costs, including wages, and arrived at a determination of an appropriate rate factoring in an approximate profitability rate. However, by imposing the dictates of the Living Wage Law upon A&B, the

June 15, 2009  
Page 2



County is impermissibly diminishing the reimbursement rate that is exclusively decided by the State. In addition, the enforcement of the Living Wage Law by reducing the profitability of A&B below the standard set by the State contradicts the intent of the State law to sustain an efficient and economically operated service organization.

*The Contract Was Not Effective Until December 2007*

It is clear that the Living Wage Law was not passed until December 2006 (see Comptroller's web page attached hereto). In A&B's case, it was not aware of the law until the earliest August 30, 2007 when A&B was presented with a new contract for signature. The County, however, did not sign that contract until December 3, 2007 (see page 30 of the contract and routing slip attached hereto). Further, the executed contract was not provided to A&B until on or about December 11, 2007 (see copy of transmittal memo attached hereto). Because the County did not formally approve the contract with the reference to the Living Wage Law until December 2007, A&B should not be charged with compliance until the earliest mid-December 2007.

The reason for this conclusion is based in the Living Wage Law itself. Simply stated, in order for the Living Wage Law to be applicable an entity must be a party to a contract with or for the County. Thus, until there was a contract in place for 2007 (which did not occur until December 2007), there could be no obligation under the Living Wage Law.

**Specific Responses to Audit Recommendations**

Compensated Days Off:

1. A&B has prepared and issued a policy on Compensated Days Off that has been distributed to all employees.
2. Subject to the arguments above and in our May 26, 2009 letter, A&B will identify any underpayments for compensated days off, calculate the amount, if any, owed to each employee, provide the Comptroller with a copy of the calculations and make the payments to the affected employees by November 1, 2009.

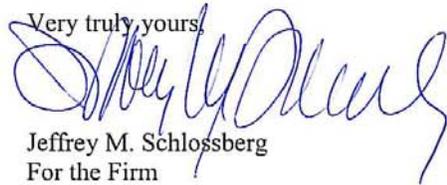
Living Wage Rate:

1. Subject to the arguments above and in our May 26, 2009 letter, A&B will identify any underpayments regarding the living wage rate for 2007, calculate the amount, if any, owed to each employee, provide the Comptroller with a copy of the calculations and make the payments to the affected employees by November 1, 2009.

June 15, 2009  
Page 3



2. The current Living Wage Law poster has been posted at A&B's home office.

Very truly yours,  
  
Jeffrey M. Schlossberg  
For the Firm

JMS:sbs

Enclosures

cc: A&B Health Care Services Inc.

#457076

Se

Home Living & Working Doing Business Accessing Gov't Exploring Nassau County Departments Nas

- Comptroller Home
- Biography
- News Releases
- Audits
- Special Districts:  
Reforming Local  
Government
- Special Reports
- Nassau County Finances
- Living Wage
- Letters & Viewpoints
- Employment Opportunities
- Information for County  
Employees
- Information for County  
Retirees
- Contact



YOU ARE HERE >Home/Living Wage

### Living Wage Overview

The Comptroller's Living Wage Unit enforces Nassau County Local Law #1-2006 enacted in December of 2006. The Nassau County Living Wage Law is a local law that was enacted to ensure that employees of Nassau County contractors and lessees are earning a minimum hourly wage, receiving health benefits or a health benefits supplement, and are entitled to a certain number of paid days off.

The Law applies to the following types of contracts and leases entered into by the County after January 1, 2007:

- Service contracts for \$25,000 or more
- Financial assistance contracts for more than \$ 50,000 with an entity having at least 10 employees
- Leases of property owned or controlled by the County
- Subcontractors of the covered contractors and lessees are also subject to the law

**Living Wage Information H**

**Online Complaint Form**

**Rules**

**The Nassau County Law**

**Living Wage Forms**

**FAQ**

**Contact Us**

**CLICK HERE FOR SPANISH VERSION 'LA LEY DE LIVING WAGE'**

***Click Here for Living Wage Audit Reports***

February 11, 2008 - Weitzman Presents Report to Legislature on Living Wage Law Compliance (Full Report Available)



**What is Nassau County's Living Wage Law?**

- City, Town & Village Governments
- New York State Government
- United States Government
- Copyright © 2009 Nassau County All Rights Reserved

[Browser Support](#) | [Privacy Policies](#) | [Disclaimer](#) | [Contact Us](#)

Appendix

IN WITNESS WHEREOF, the Provider has executed this Agreement on  
August 30, 2007 and the County has executed this Agreement on  
the date first above written.

A & B HEALTH CARE SERVICES, INC.

By: Elaine Schwartz  
Name: ELAINE SCHWARTZ  
Title: PRESIDENT  
Date: 8/30/07

NASSAU COUNTY

By: Mary Curtis  
Name: Mary Curtis  
Title: Deputy County Executive  
Date: 12/3/07

PLEASE EXECUTE IN BLUE INK

59528

Appendix

WILLIAM P. GEIER  
CLERK OF THE LEGISLATURE



PHONE: 516 571-4252  
FAX: 516 571-4217

NASSAU COUNTY LEGISLATURE  
EXECUTIVE BUILDING  
ONE WEST STREET MINEOLA, NEW YORK 11501

Date: December 11, 2007  
Name: A & B HEALTH CARE SERVICES, INC.  
99 NORTH BROADWAY  
Address: HICKSVILLE, NY 11801

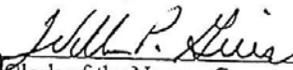
RE: 70000132 \$.01

Dear Sir/Madam:

Enclosed herewith is a copy of an executed contract by your organization and Nassau County concerning services rendered for the N.C Dept. of Social Services.

This agreement has been duly approved by the applicable County authorities and is forwarded to you for your records.

Very truly yours,

  
Clerk of the Nassau County Legislature



# Appendix

Contract ID#: CQSS07000132



Department: Social Services

## Contract Details

SERVICE Personal Care Services

NIFS ID #: CQSS07000132

NIFS Entry Date: 09/04/07 Term: from 01/01/07 to 12/31/07

New X Renewal	<input type="checkbox"/>
Amendment	<input type="checkbox"/>
Time Extension	<input type="checkbox"/>
Addl. Funds	<input type="checkbox"/>
Blanket Resolution X RES# 7-1986	

1) Mandated Program:	Yes X	No <input type="checkbox"/>
2) Comptroller Approval Form Attached:	Yes X	No <input type="checkbox"/>
3) CSEA Agmt. § 32 Compliance Attached:	Yes X	No <input type="checkbox"/>
4) Vendor Ownership & Mgmt. Disclosure Attached:	Yes <input type="checkbox"/>	No X
5) Insurance Required	Yes X	No <input type="checkbox"/>

## Agency Information

Vendor	
Name <u>A &amp; B Health Care Services, Inc.</u>	Vendor ID# <u>112525397 - 01</u>
Address <u>99 North Broadway</u> <u>Hicksville, NY 11801</u>	Contact Person <u>Elaine Schwartz</u>  Phone <u>516 938-5225</u>

County Department
Department Contact <u>Virginia Webb</u>
Address <u>60 Charles Lindbergh Blvd</u>
Phone <u>516 227-7452</u>

## Routing Slip

DATE Rec'd.	DEPARTMENT	Internal Verification	DATE App'd & Fw'd.	SIGNATURE	Leg. Approval Required
	Department	NIFS Entry (Dept) <input type="checkbox"/> NIFS Appvl (Dept. Head) <input type="checkbox"/>	9/10/07	<i>[Signature]</i>	
	OMB	NIFS Approval <input checked="" type="checkbox"/>	9/25/07	<i>[Signature]</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not required if blanket resolution
9/26/07	County Attorney	CA RE & Insurance Verification <input checked="" type="checkbox"/>	9/26/07	<i>[Signature]</i>	
9-26-07	County Attorney	CA Approval as to form <input checked="" type="checkbox"/>	11-27-07	<i>[Signature]</i>	
	Legislative Affairs	Fw'd Original Contract to CA <input type="checkbox"/>			
	Rules <input type="checkbox"/> / Leg. <input type="checkbox"/>	<input type="checkbox"/>			Yes <input type="checkbox"/> No <input type="checkbox"/>
11-27-07	County Attorney	NIFS Approval <input checked="" type="checkbox"/>	11-27-07	<i>[Signature]</i>	
	Comptroller	NIFS Approval <input type="checkbox"/>	12/3/07	<i>[Signature]</i>	
	County Executive	Notarization <input type="checkbox"/> Filed with Clerk of the Leg. <input type="checkbox"/>		<i>[Signature]</i>	

PR5254 (8/04)

**Auditor's Follow-up Response**

*We do not concur with A&B's assertions that the Law impermissibly diminished the Medicaid Reimbursement rate and that the contract was not effective until December 2007. Section 8 of the Agreement states "This Agreement will be in effect for one year beginning January 1, 2007 and ending December 31, 2007 and may be renewed for three successive one-year terms at the discretion of the Social Services District". Under the contract's Appendix A, A&B has agreed that "the wages paid for a legal day's work shall not be less the prevailing rate of wages as defined by law or the living wage as defined in Nassau County Local Law 1-2006, whichever is higher". A&B signed a contract that was effective January 1, 2007, where it agreed to comply with the Law and the Law.*

*The timing of the corrective actions proposed by A&B is not acceptable. We note with significant concern, that although A&B was advised of these findings in our draft report on May 14, 2009, A&B's response indicated a targeted completion date of November 1, 2009 for the required corrective action. A&B should have taken corrective action immediately.*

*Our audit of compliance for 2008 will also include a verification that all the required corrective payments were made for 2007.*

## Appendix

---



Writer's Direct Dial: (516) 663-6554  
Writer's Direct Fax: (516) 663-6754  
Writer's E-mail: jschlossberg@rmfpc.com

June 19, 2009

By Fax and Regular Mail

Ms. Aline Khatchadourian  
Deputy Comptroller  
Office of the Comptroller  
240 Old Country Road  
Mineola, NY 11501

Re: A&B Health Care Services Inc.

Dear Ms. Khatchadourian:

I am writing as a follow-up to our telephone conversation earlier this week. As you know, we represent A&B Health Care Services Inc. ("A&B").

We write to inform you that as of this date, A&B is fully compliant with the Living Wage Law both in terms of the appropriate hourly wage plus benefit supplement paid to the covered employees as well as with regard to compensated days off.

In addition, for the year 2008, all eligible employees were paid for their compensated days off entitlement. Payments were made beginning with the payroll date of October 18, 2008 through the last payroll date in December 2008. A&B is in the process of calculating any shortfalls in the hourly wage component for the period of January 1, 2008 through July 31, 2008. To the extent additional compensation is owed, A&B intends to make those payments to the employees on or before November 1, 2009. Employees already have been paid in accordance with the Living Wage Law retroactive to August 1, 2008 (except for the additional \$.05 representing the increase in the benefit supplement rate; that retroactive payment also will be made by November 1, 2009).

East Tower, 15th Floor, 1425 RXR Plaza, Uniondale, NY 11556-1425 T 516.663.6600 T 212.688.8300 F 516.663.6601 T www.rmfp.com

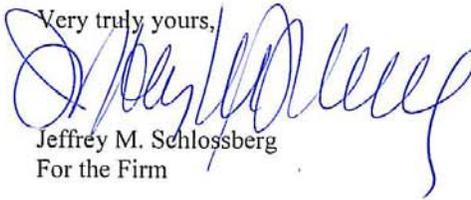
Appendix

---

June 19, 2009  
Page 2



We thank you for your courtesies and cooperation in this matter.

Very truly yours,  
  
Jeffrey M. Schlossberg  
For the Firm

JMS:sbs

cc: A&B Health Care Services Inc.

#457925

**Auditor's Follow-up Response**

*Our audit of compliance for 2008 will also include a verification that all the required corrective payments were made for 2007.*

Sincerely,

/Aline Khatchadourian/

Aline Khatchadourian

Deputy Comptroller for Audit and Special Projects