

**Nassau County
Office of the Comptroller**



**Limited Review of Able Health Care Services Inc.'s
Compliance with the Nassau County Living Wage Law**

2014 through 2015

GEORGE MARAGOS

Comptroller

May 8, 2017

NASSAU COUNTY
OFFICE OF THE COMPTROLLER

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Executive Summary

Introduction:

Able Health Care Services, Inc. (“Able”) contracted with the Nassau County Department of Social Services to provide Personal Care Service to clients covered under Medicaid. The reimbursement for these services are through Medicaid’s eMedNy billing. The contract has been in effect since January 1, 2011 and is automatically renewed every year unless there is cause for termination.¹ The contract requires compliance with the Nassau County Living Wage Law (“Law”).²

This Law was enacted by the Nassau County Legislature to ensure that all employees of contractors that do business with Nassau County earn the living wage and receive health benefits or a health benefits supplement. In addition, full time employees working 40 hours weekly are provided 12 days paid days off, while part time workers who work 20 hours or more receive a proportionate amount.

The Contract also states that live-in aides will be expected to work no more than thirteen (13) hours in a twenty-four (24) hour day for which they are on call, and no more than (5) days per week on average.

The Nassau County Comptroller’s office is responsible for monitoring, investigating, and auditing compliance with this law.³

Purpose:

The purpose of this review is to ensure Able is in compliance with the Nassau County Living Wage law as it relates to:

- a) paying the Living Wage rate that either includes health benefits or a health benefit supplement; and
- b) paying 12 days compensation time to employees who work 40 hours per week, and a proportionate amount to those who work 20 or more hours.

Key Findings:

- Able underpaid four live-in aides a total of \$31,604. These aides were paid at the proper rate for only 10 hours instead of the 13 hours they were scheduled to work per 24-hour shift.⁴

¹ CQSS11000097, Contractual Agreement between Nassau County Department of Social Services and Able Health Care Services, Inc.

² Miscellaneous Laws of Nassau County- Title 57 – Nassau County Living Wage Law

³ The Comptroller’s rules can be found on the Nassau County Comptroller’s website.

⁴ NYS Department of Labor Opinion, RO-09-00169, & US Department of Labor, 29 CFR §785.22-Duty of 24 hours or more.

Executive Summary

- Able owed eight employees an estimated total of \$435 for accrued leave time earned.

Key Recommendations:

Able should:

- update its policy to ensure live-in aides are paid for 13 hours per 24-hour shift;
- maintain appropriate records of compensated time accrued to ensure that part-time employees who work twenty or more hours per week accrue leave in increments equal to the rate of accrual for full-time employees;
- pay the \$31,604 owed to four employees who were not paid for 13 hours during the audit period;
- pay the \$435 owed to eight employees for unpaid accrued leave time earned; and
- provide proof of the payments to the Comptroller's Office.

The matters covered in this report have been discussed with the officials of Able Health Care Inc. On March 30, 2017, we submitted a draft report to Able for their review. Able provided their response on April 14, 2017. Their response and our follow-up to their response are included as an appendix to this report.

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Introduction

Background

The Living Wage Law (“Law”) was enacted by the Nassau County Legislature to ensure that all employees of contractors that do business with Nassau County earn the Living Wage and receive health benefits or a health benefits supplement. Under the Law, full-time employees working 40 hours per week are entitled to receive no less than 12 paid days off a year, while part-time employees working at least 20 hours per week receive proportionate compensated days off.⁵

The contract between Able Health Care Services Inc. (“Able”) as the “Provider” and Nassau County⁶ for personal care services⁷ to recipients of Medicaid⁸ states that Able Health Care will comply with all requirements of the Law.

In addition, the contract provides that live-in aides will be expected to work no more than thirteen (13) hours within the twenty-four (24) hours per day they are on call and no more than (5) days per week on average.

This contract, which became effective on January 1, 2011, is automatically renewed at the end of each year unless terminated.

Able, as the Provider, is reimbursed for these personal care services by Medicaid via eMedNy at rates set forth by the New York State Department of Health. For the year 2015, reimbursements amounted to \$472,644. For years 2014 and 2015, forty-one employees were covered under this contract, of which four worked as live-in aides.

Audit Scope, Objectives and Methodology

The objective of the review was to determine whether Able was in compliance with the Nassau County Living Wage Law and related Rules. The review period was January 1, 2014 to December 31, 2015.

The specific objectives included:

- Review Medicaid reimbursements (eMedNy) and patient schedules to ensure completeness of the payroll.
- Compare the payroll rate of pay with the applicable Living Wage rate.

⁵ Miscellaneous Laws of Nassau County- Title 57 – Nassau County Living Wage Law.

⁶ Contract Number; CQSS11000097 Personal Care Services.

⁷ As defined in New York State 18 NYCRR.

⁸ As defined in Title 11 of Article 5 of the New York State Social Services Law and/or Title XIX of the Federal Social Security Act.

Introduction

- Compare the ADP payroll with ADP's supporting records summarized on an Excel payroll spreadsheet.
- Calculate the compensation for time accrued based on 20 or more hours worked in a 40 hour workweek.

We believe our review provides a reasonable basis for the findings and recommendations contained herein.

Findings and Recommendations

Audit Finding:

(1) Live-in Aides Were Not Paid For 2,094 Hours Totaling \$31,604 in Underpayments

Our review revealed that four (4) employees were underpaid for 2,094 hours totaling \$31,604. These employees were scheduled to work 13-hour shifts, but were only paid for 10 hours, which is not in compliance with the Law. The Law provides that aides be paid for every hour they are required to be at a client's home⁹. The New York State Department of Labor's interpretation of the law is that a home care aide employed to work a 24-hour shift must be paid for *at least* 13 hours¹⁰. Further, Able was reimbursed from eMedNy at the Live-In rates, confirming that these employees stayed overnight at the clients' homes.

We compared Able's ADP Payroll Register with their "Schedules by Clients" reports and found that from 2014 through December 6, 2015, four (4) of forty-one (41) employees were underpaid for 2,094 hours totaling \$31,604.

Exhibit I is a summary by employee of the unpaid hours and associated dollar amounts due for each year.

Exhibit I

Able Health Care
Summary of Underpaid Live In Aid Hours and Amounts Due
January 1, 2014 - December 31, 2015

	<u>2014</u>		<u>2015</u>		<u>Total</u>	
	<u>Unpaid Hours</u>	<u>Amount Due</u>	<u>Unpaid Hours</u>	<u>Amount Due</u>	<u>Unpaid Hours</u>	<u>Amount Due</u>
Employee 1	783	\$ 12,004.26	741	\$ 11,498.46	1,524	\$ 23,502.72
Employee 2	159	2,347.14	207	2,955.32	366	5,302.46
Employee 3	153	2,436.66	0	-	153	2,436.66
Employee 4	0	-	51	361.86	51	361.86
	<u>1,095</u>	<u>\$ 16,788.06</u>	<u>999</u>	<u>\$ 14,815.64</u>	<u>2,094</u>	<u>\$ 31,603.70</u>

⁹ 12 N.Y.C.R.R. §142.2.1

¹⁰ NYS Department of Labor Opinion, RO-09-00169 - The minimum 13 hours of compensation is premised on the following: the aide is allowed 8 hours of sleep, actually receives at least 5 uninterrupted hours of sleep and gets three long meal breaks on the 24 hour shift.

Findings and Recommendations

Audit Recommendations:

We recommend that Able:

- update its policy to ensure live-in aides are paid for 13 hours per 24-hour shift; and
- pay the amount owed to each employees and provide proof of payment to the Comptroller's Office with supporting calculations.

Audit Finding:

(2) Eight (8) Employees Were Underpaid for Compensation Time Totaling \$435

Our review revealed that Able did not maintain accurate and complete time records of accrued compensation time. The Nassau County Living Wage Law provides that each full-time covered employee is entitled to 12 paid days off, while part-time covered employees working at least 20 hours per week receive proportionate compensated days off.¹¹ Auditor analysis of the payroll registers from January 2014 to December 2015 found that eight of forty-one employees were underpaid a total of \$435 in compensation time.

Exhibit II is a summary by employee of the number of unpaid hours and the associated dollar amounts due for each year.

¹¹ Miscellaneous Laws of Nassau County - Title 57 – Nassau County Living Wage Law.

Limited Review of Able Health Care Services Inc.'s Compliance with the Nassau County Living Wage Law 2014 through 2015

Findings and Recommendations

Exhibit II

Able Health Care
Summary of Unpaid Compensation Time
January 1, 2014 - December 31, 2015

	<u>2014</u>		<u>2015</u>		<u>Total</u>	
	<u>Unpaid Hours</u>	<u>Amount Due</u>	<u>Unpaid Hours</u>	<u>Amount Due</u>	<u>Unpaid Hours</u>	<u>Amount Due</u>
Employee 1	0	\$ -	1.93	\$ 31.12	1.93	\$ 31.12
Employee 2	0	-	4.95	76.73	4.95	76.73
Employee 3	0	-	4.94	76.57	4.94	76.57
Employee 4	0	-	6	81.48	6	81.48
Employee 5	0	-	0.84	14.12	0.84	14.12
Employee 6	0	-	2.82	43.71	2.82	43.71
Employee 7	0	-	1.74	26.97	1.74	26.97
Employee 8	5.53	84.11	0	-	5.53	84.11
	<u>5.53</u>	<u>\$84.11</u>	<u>23.22</u>	<u>\$350.70</u>	<u>28.75</u>	<u>\$ 434.81</u>

Audit Recommendations:

We recommend that Able:

- a) maintain appropriate records of compensated time accrued; and
- b) calculate the amount owed to employees eligible for accrued compensated time and provide proof of payment to the Comptroller's Office with supporting calculations.



Able Health Care Service, Inc.

1240 Broadcast Plaza, Merrick, N.Y. 11566 / Tel. 516-546-8000 / Fax. 516-868-7394

April 13, 2017

JoAnn Greene
Director of Field Audit
Office of the Nassau County Comptroller

Dear Ms. Greene

Able Health Care Services, Inc takes the results of this audit seriously. We understand that employees of contractors that do business with Nassau County earn a living wage and receive health benefits or health benefit supplements. In addition, full time employees working 40 hours weekly are provided 12 days of paid leave, while part time workers who work 20 hours or more receive a proportionate amount. We also understand that live- in aides will be expected to work no more than 13 hours in a twenty four (24) hour day for which they are on call, and no more than (5) days per week on average.

Key findings of this audit found:

- Able underpaid four live-in aides at total of \$31,604. These aides were paid at the proper rate for only 10 instead of 13 hours they were scheduled to work per 24- hours shift
- Able owed eight employees an estimated total of \$435.00 for accrued leave time earned.

Able Health Care Service, Inc worked with Brian Fredericks, Supervisor Office of the Nassau County Comptroller to ensure aides were compensated for any error in calculation of owed wages. All aides were reimbursed for unpaid hours.

Able Health Care Inc, computer system has been programed to ensure aides on Nassau County cases are paid 13 hours for live-in cases and accurately tracks accrued paid time off and health benefits. Able will be doing random audits to ensure compliance with all regulations

If you need any additional information, please feel free to contact me

Thank you

Sandy Weintraub RN, PT
Executive Director

A Professional Home Health Care Service by People who Care
Providing care since 1976

Audit Finding:

(1) Live-in Aides Were Not Paid For 2,094 Hours Totaling \$31,604 in Underpayments

Audit Recommendations:

We recommend that Able:

- update its policy to ensure live-in aides are paid for 13 hours per 24-hour shift; and
- pay the amount owed to each employees and provide proof of payment to the Comptroller’s Office with supporting calculations.

Able’s Response:

Able Health Care Service, Inc. worked with Brian Fredericks, Supervisor, Office of the Nassau County Comptroller to ensure aides were compensated for any error in calculation of owed wages. All aides were reimbursed for unpaid hours.

Auditor’s Follow-up:

We concur with the corrective action taken.

Follow up review by the auditors noted that Employees 1 and 4 shown in Exhibit I of the report have received the amounts they were due.

Employee 2 was reimbursed in 2 payments; however, the employee had not cashed the second check as of the date of this report (which represented \$572.26 of the \$5302.46 due).

A check was prepared on 2/17/17 to reimburse Employee 3 for the full amount owed of \$2,436.66, but as of the date of this report, the check remained outstanding.

We recommend that every effort is made to ensure Employees 2 and 3 receive the amounts still owed to them and proof of payment (cancelled checks) be provided to the Comptroller’s Office.

Audit Finding:

(2) Eight (8) Employees Were Underpaid for Compensation Time Totaling \$435

Audit Recommendations:

We recommend that Able:

- a) maintain appropriate records of compensated time accrued; and

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- b) calculate the amount owed to employees eligible for accrued compensated time and provide proof of payment to the Comptroller’s Office with supporting calculations.

Able’s Response:

Able Health Care, Inc. computer system has been programed to ensure aides on Nassau County cases are paid 13 hours for live-in cases and accurately tracks accrued paid time off and health benefits. Able will be doing random audits to ensure compliance with all regulations.

Auditor’s Follow-up:

With regard to Recommendation a), we concur with the corrective action taken by Able to program its computer system to ensure aides on Nassau County cases are paid 13 hours for live-in cases and accrued paid time off and health benefits are tracked accurately. We also concur that random audits by Able will help to ensure compliance with all regulations. We recommend that evidence of the random audits be documented and retained.

Able Health Care, Inc. did not mention Recommendation b) in its response to the audit. We reiterate the recommendation for Able Health Care, Inc. to pay the amounts owed to the eight employees listed in Exhibit II and provide proof of payment, including cancelled checks, to the Comptroller’s Office as soon as possible.