

# The Worst Mistakes You May Be Making Under the Wage Parity Act

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- 1) You are unaware of the WPA's limited coverage and have increased your wage and benefit costs unnecessarily.
- 2) You are composing your \$4.09 package with benefits that do not qualify under the WPA, ERISA, or New York Labor Law.
- 3) You are calculating your benefit "spends" incorrectly, exposing your agency to audits and lawsuits.

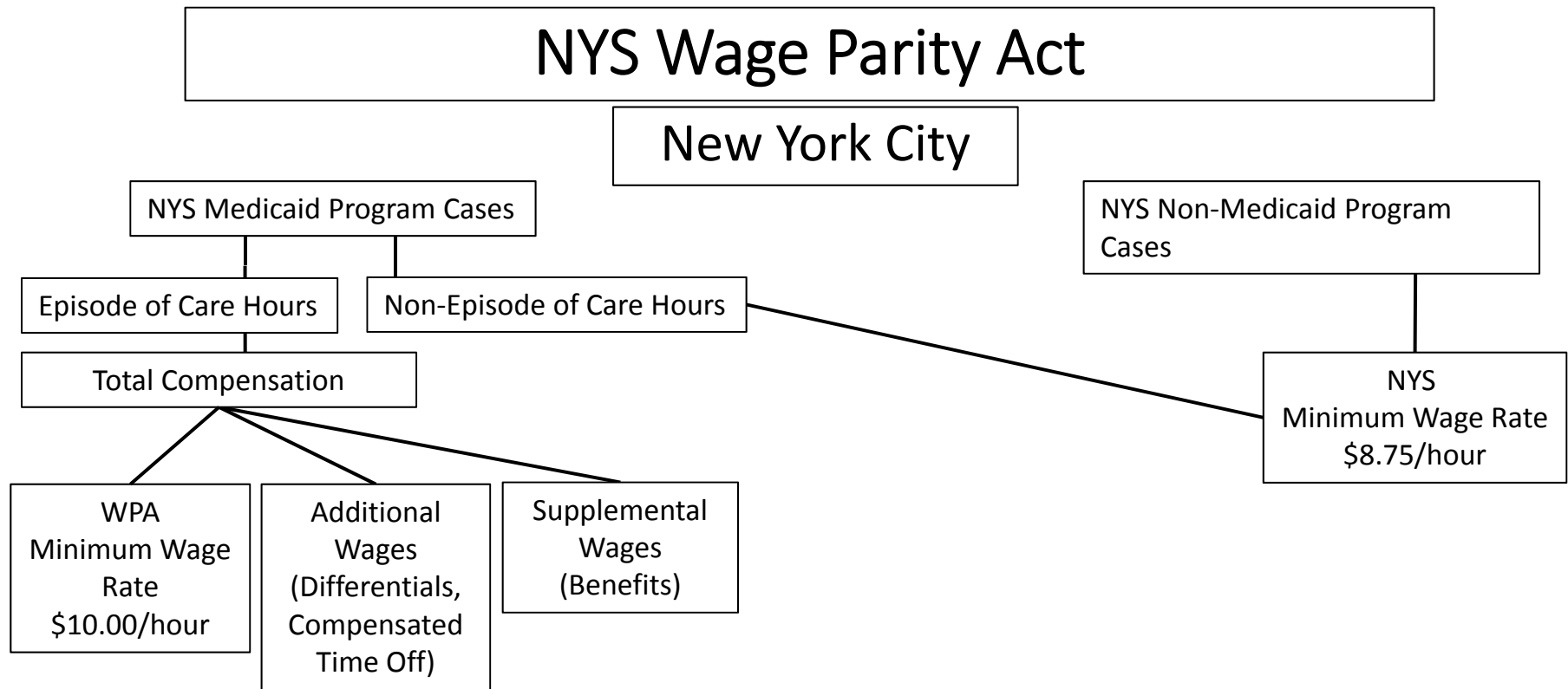
## **Mistake No. 1: You are unaware of the WPA's limited coverage and have increased your wage and benefit costs unnecessarily.**

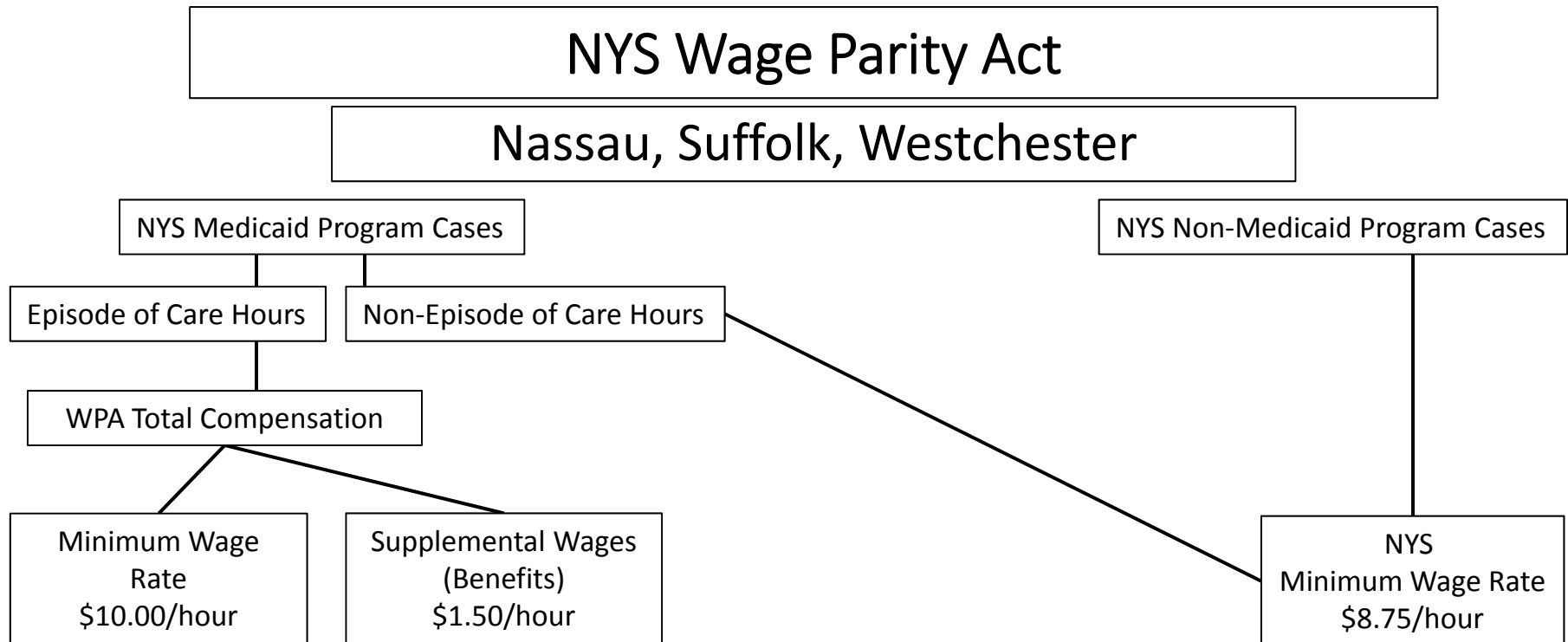
- “Nothing in this section [**the Wage Parity Act**] should be construed as applicable to any service provided by certified home health agencies, long term home health care programs, or managed care plans except for all episodes of care reimbursed in whole or in part by the New York Medicaid program.”

N.Y. Pub. Health Law § 3614-c (10)

- “**Episode of care**” means any service unit reimbursed, in whole or in part, by the New York state medical assistance program, whether through direct reimbursement or covered by a premium payment, and which covers, in whole or in part, any service provided by a home care aide, including but not limited to all service units defined as visits, hours, days, months or episodes.

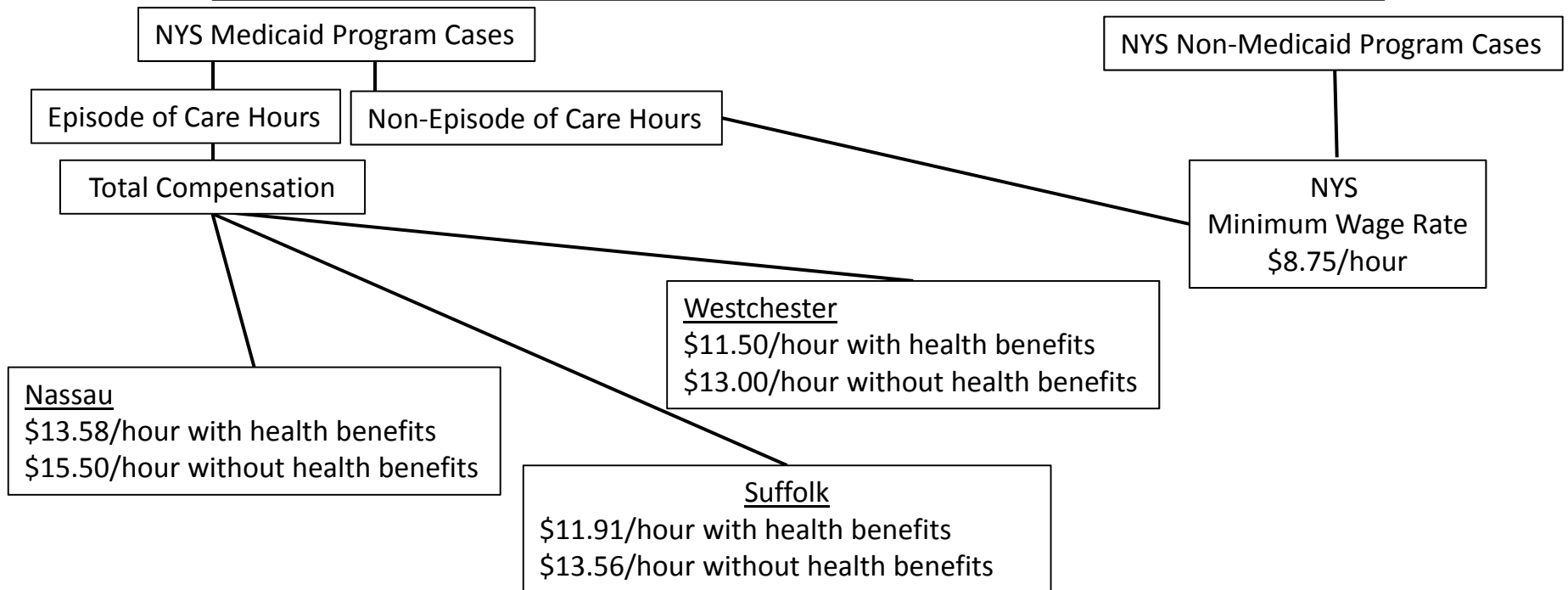
N.Y. Pub. Health Law § 3614-c (1)(f)





# NYS Wage Parity Act

Nassau, Suffolk, and Westchester county cases  
contracted with local department of social services  
("LDSS")



# Medicaid Episode of Care Hours

## NYS Medicaid Program Cases

### Episode of Care Hours @ \$10.00 per hour

1. All "service" hours worked time
2. "Engaged to wait" time (e.g., denial of entry time; awaiting hospital admission or discharge)
3. "Call-to-duty" time interrupting sleep-time or meal or break time on Sleep-In cases

### Non-Episode of Care Hours @ \$8.75 per hour

1. In-Service Training Time
2. Annual Medical Exam Time
3. Disciplinary Office Meeting Time
4. Intra-Day Travel Time (Between two client cases; to an in-service training; to an annual medical exam; to an office disciplinary meeting; to pick up DME at the office)
5. Compensated Time Off (Holiday pay; annual, sick, and personal time; bereavement leave pay; jury duty pay)

**Q1. What is the 2014 rate for New York City and how was it determined?**

A1. \$14.09 will be the new minimum rate of home care aide total compensation for New York City, effective March 1, 2014. That rate was determined according to the statutory methodology for calculating the prevailing rate of total compensation as of January 1, 2011 (“prevailing rate”)...

January 2014 FAQs

**“Total Compensation”** means all wages and other direct compensation paid to or provided on behalf of the employee, including, but not limited to, wages, health, education or pension benefits, supplements in lieu of benefits and compensated time off, except that it does not include employer taxes or employer portions of payments for statutory benefits, including but not limited to FICA, disability insurance, unemployment insurance and workers’ compensation.

N.Y. Pub. Health Law § 3614-c

## “Additional Wages”

### 1. Differential Pay

- Weekend hours differential
- Mutual case differential
- Case requiring special training differential
- Hard-to-fill case differential

### 2. Wage Supplements

- Holiday Pay
- Vacation Pay
- Sick Pay
- Bonuses



**Mistake No. 2: You are composing your \$4.09 package with benefits that do not qualify under the WPA, ERISA, or New York Labor Law.**

- **Q17. What benefits can be credited against the Worker Parity Law minimum wage?**
- **A17. Credit can be given for health, education or pension and time off, without regard to whether such benefits are provided directly by the employer or through a plan or program. Credit can also be given for any other employee benefits that employers may choose to provide through a plan or program. No credit may be given for employer taxes or the employer portion of statutory benefits including but not limited to FICA, disability insurance and workers compensation.**

January 2012 FAQs

## Educational Benefits

- **Q18. What types of worker benefits qualify under the definition of the home care worker parity law?**
- A18. Qualifying benefits are those which primarily benefit the employee. While benefits relating to education are permissible, in-service training primarily benefits the employer since it is specific to the operations of the employer, [and] cannot be counted as an education benefit. In addition to the requirement that the education primarily benefit the employee, the follow requirements, which are derived from Federal Regulation 29 C.F.R. S 778.27, apply to qualify educational benefits:
  - a) Attendance is outside of the Employee's regular working hours;
  - b) Attendance is in fact voluntary;
  - c) The course, lecture, or meeting is not directly related to the Employee's job; and
  - d) The Employee does not perform any productive work during such attendance.

February 2012 FAQs

## “Supplemental Wages”

- **Q10. What types of benefits can satisfy the supplement portion of the required total compensation?**
- A10. The supplement portion can be satisfied through any type of payment covered by the following statutory definition of the term “total compensation.” ... That definition does not exclude other benefits that employers may choose to provide through employee benefit plans regulated under the Employee Retirement Income Security Act. Nor does it exclude other benefits that employees may choose to obtain through wage deductions permitted under New York State Labor Law § 193...[emphasis added].

January 2014 FAQs

## ERISA Welfare Benefit Plans

Any plan, fund or program...for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

29 U.S.C. § 1002

## Items Employees May Deduct From Wages Under NYLL Section 193

- i. insurance premiums and prepaid legal plans;
- ii. pension or health and welfare benefits;
- iii. contributions to a bona fide charitable organization;
- iv. purchases made at events sponsored by a bona fide charitable organization affiliated with the employer where at least twenty percent of the profits from such event are being contributed to a bona fide charitable organization;
- v. United States bonds;
- vi. dues or assessments to a labor organization;
- vii. discounted parking or discounted passes, tokens, fare cards, vouchers, or other items that entitle the employee to use mass transit;
- viii. fitness center, health club, and/or gym membership dues;

## Items Employees May Deduct From Wages Under NYLL Section 193 (continued)

- ix. cafeteria and vending machine purchases made at the employer's place of business and purchases made at gift shops operated by the employer, where the employer is a hospital, college, or university;
- x. pharmacy purchases made at the employer's place of business;
- xi. tuition, room, board, and fees for pre-school, nursery, primary, secondary, and/or post-secondary educational institutions;
- xii. day care, before-school and after-school care expenses;
- xiii. payments for housing provided at no more than market rates by non-profit hospitals or affiliates thereof; and
- xiv. similar payments for the benefit of the employee.

*[Emphasis added]*

## Mistake No. 3: You are calculating your benefit “spends” incorrectly, exposing your agency to audits and lawsuits.

- Q15. Many employers have pointed out that the cost of a benefit which can be “credited” toward total compensation may, in some circumstances, vary over time. Does the employer have to calculate its anticipated average hourly cost, subject to a periodic “true-up” to assure that the predicted cost of those benefits was in fact met, or if not, to provide the necessary cumulative wage supplement.
- A15. Yes, employers may compute their hourly cost of providing benefits by using an average that divides total costs by total hours. Note, however, that the *total hours worked should not be limited to simply those hours that are subject to the Wage Parity Law, but should include all hours worked during the relevant period*. Any adjustments made due to varying costs of benefit supplements that are predictable should not result in a requirement to “true-up” the credit taken since such costs should have been anticipated by employers. Any unanticipated changes in costs should be taken into account as soon as practicable without the reduction in the benefits or wages provided to employees [*emphasis added*].

FAQ February 2012

## Per Hour “Credit” Calculation

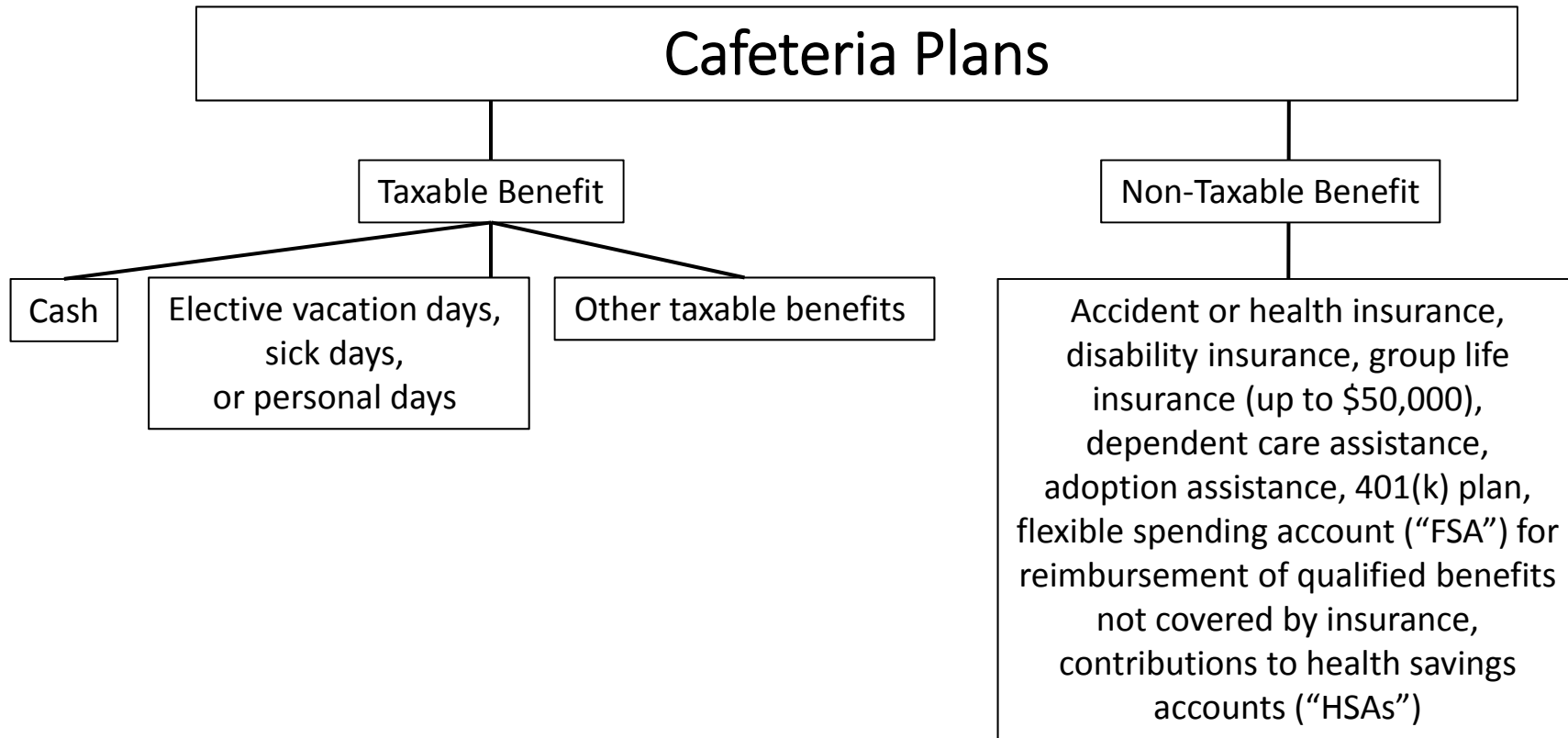
### Supplemental Wages

Total cost of specific benefit over a calendar year  
÷  
ALL episode of care hours worked by ALL home care workers on ALL cases,  
(whether Medicaid or Non-Medicaid) over the same calendar year  
=  
Per hour cost



## Sample Calculation of Health Benefit Credit

- $\$1,500,000 / 1,000,000$  Medicaid episode of care hours only = \$1.50 per hour
- $\$1,500,000 / 1,200,000$  Medicaid **and non-Medicaid** episode of care hours = \$1.25 per hour
- Thus, adding non-Medicaid episode of care hours requires that the employer contribute another \$0.25 in additional or supplemental wages to obtain a full \$1.50 per hour credit toward the WPA's \$4.09 package.



## Premium Rebates and Dividends

- **Q19. Are employers who contribute \$1.35 per hour per employee to a plan (or a third-party administrator), whether insured or self-insured, to cover the cost of premiums, still in compliance with Section 3614-c if the arrangement subsequently distributes a “refund” or “dividend” to the employer after the end of a plan year, which results in a contribution of less than \$1.35 per hour per employee?**
- **A19. No. Any arrangement [whether insured or self-insured] where the employer may qualify for a refund or dividend must include a guarantee that the contribution will not be less than the amount of the credit taken [toward the \$4.09 package].**

February 2012 FAQs