

PEOPLE OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
LABOR BUREAU

IN THE MATTER OF THE INVESTIGATION
OF LETITIA JAMES, ATTORNEY GENERAL
OF THE STATE OF NEW YORK

ASSURANCE OF
DISCONTINUANCE

OF

AOD No. 21-080

CROWN OF LIFE CARE NY, LLC

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) has investigated CROWN OF LIFE CARE NY, LLC (“Crown”) pursuant to New York Executive Law § 63(12).

The investigation examined whether Crown failed to pay wages and benefits under the New York Homecare Worker Wage Parity Act, N.Y. Public Health Law § 3614-c (the “Wage Parity Act”).

This Assurance of Discontinuance (“AOD”) contains the findings in connection with this investigation of Crown and the relief agreed to by the OAG and Crown (collectively, the “Parties”).

FINDINGS

Introduction and Background

1. Crown is a corporation that operates a licensed home care services agency with its principal place of business located at 1368 60th Street, Brooklyn, New York 11219. Crown is an employer within the meaning of the New York Labor Law (“NYLL”) and the Fair Labor Standards Act (“FLSA”), and a licensed home care services agency within the meaning of the Wage Parity Act.

2. Crown employs home care aides that provide assistance with activities of daily living to elderly and disabled individuals, including individuals who participate in the Medicaid program.

3. The Wage Parity Act established minimum wage and benefit requirements, effective March 1, 2012, for home care aides who render services to Medicaid recipients in New York City and, effective March 1, 2013, for agencies located in Nassau, Suffolk, and Westchester Counties.

4. Pursuant to the Wage Parity Act, home care aides who perform Medicaid-reimbursed work are to be compensated with an hourly base wage and a supplemental benefit, which is comprised of an additional wage component and a supplemental wage component (collectively, "Total Compensation").

Practices Related to Payment of Wages

5. Based on its investigation of Crown, the OAG concluded that from approximately April 1, 2014 through December 31, 2018:

- a. During certain time periods, Crown did not pay its home care aides the requisite Total Compensation pursuant to the Wage Parity Act; and
- b. Crown used funds intended to provide benefits to home care aides to purchase medical stop-loss insurance for its self-funded health plan, a secondary insurance plan designed to minimize financial risk for the beneficiary employer. These payments inured to the benefit of the employer, not to home care aides, and thus did not constitute compensation under the Wage Parity Act.

6. Based on for the foregoing, the Attorney General has concluded that Crown engaged in persistent and repeated illegality in violation of Executive Law § 63(12) and the Wage Parity Act.

7. The OAG finds the relief and agreements contained in this AOD appropriate and in the public interest. THEREFORE, the OAG is willing to accept this AOD pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12) based on the conduct described above from April 1, 2014 to December 31, 2018.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

Entities Bound By the AOD

8. This AOD binds Crown, as well as its principals, directors, beneficial owners, officers, shareholders, successors, and assigns.

Compliance with Wage and Hour Law and Other Laws Governing Employment Practices

9. Crown hereby acknowledges that it understands and will comply with all applicable federal, state, and local laws, including but not limited to the Wage Parity Act, the FLSA, and the NYLL. Crown agrees and acknowledges that any violation of such laws is a violation of this AOD, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 7, in addition to any other appropriate investigation, action, or proceeding.

10. Crown agrees to comply with all provisions of the Domestic Workers Bill of Rights, including but not limited to all paid time off as defined in NYLL § 161.

Programmatic Relief

11. Crown will begin to implement the relief described in paragraphs 12 to 16 below within 30 days of the full execution of this AOD (the “Effective Date”) and continue to implement the relief for six years from the effective date (the “Effective Period”).

12. Crown agrees to revise its policies and practices for Wage Parity Act compliance, if not already done so, including, but not limited to, ensuring that it provides home care aides the Total Compensation required by the Wage Parity Act, and ensuring that it trains its employees and managers on Wage Parity Act compliance. Crown will submit proposed written policies to the OAG on Wage Parity benefit entitlements under the Wage Parity Act within 30 days of the Effective Date. These proposed policies must be approved by the OAG prior to implementation and training.

13. Crown will disseminate the written policies set forth in paragraph 12 within 30 days of OAG approval. Dissemination shall include posting the written policies in Crown’s offices; incorporating them into Crown’s handbook; training personnel on the updated policies, including all individuals who provide trainings to home care aides, as well as anyone who is involved in payroll and the administration of Wage Parity benefits; and sending the policies to current Crown employees via e-mail, if Crown has the employees’ e-mail addresses, and/or notifying employees by text messages that new policies have been issued and will be distributed to employees by regular mail. Crown will also distribute the policies to employees during orientation and at one in-service training annually. The written policies must be disseminated in English, Spanish, Russian, and in the language designated by the employee as his/her primary language in the employee’s Notice & Acknowledgement of Pay Rate & Payday Form (LS 62).

14. Crown will conduct a training based on the materials set forth in paragraph 12 for home care aides and Crown's office employees, which will commence for new and existing employees within 30 days of OAG approval. Trainings conducted in English, Spanish, and Russian shall be in person and must cover Wage Parity benefit entitlements. For employees whose primary language is not English, Spanish, or Russian, Crown will provide the training materials set forth in Paragraph 12, and translation services, or separate trainings, if more than 10 employees share a primary language as designated by employees in their Notice & Acknowledgment of Pay Rate & Payday Form (LS 62). Thereafter, Crown will include information relating to Wage Parity in its orientation of employees at the beginning of their employment and at one in-service training annually.

15. Crown will comply with the notice and records retention requirements set forth in NYLL §§ 195(1)(a), (3), and (4), as amended by Section 2 of part OO of Chapter 56 of the laws of 2020, and will make any such records available to the OAG upon request, including copies of notices to employees of their Wage Parity Act benefits, signed acknowledgements, and wage statements.

16. Should Crown elect to satisfy any portion of its Wage Parity Act obligation through the provision of paid time off to its home care aides, Crown will retain contemporaneous records of policies, accruals, usages, and payments to such home care aides and will provide them to the OAG upon request.

Monetary Payment

Payments to OAG

17. Crown agrees to pay \$1,578,050 (one million five hundred seventy-eight thousand and fifty dollars) in resolution of the OAG's investigation (the "Settlement Amount"), of which

\$1,167,050 (one million one hundred sixty-seven thousand fifty dollars) will be paid directly to the OAG and will be used for distribution as restitution to current and former employees for violations of the Wage Parity Act for the time period April 1, 2014 through December 31, 2018.

18. The Settlement Amount shall be paid out as follows:

- a. Crown shall pay \$800,000 (eight hundred thousand dollars) on the Effective Date of this AOD; and
- b. Crown shall pay an additional \$367,050 (three hundred sixty-seven thousand fifty dollars) by March 31, 2022.

19. Payments from Crown to the OAG must be in the form of a wire transfer, and proof of payment should be forwarded to the New York State Attorney General's Office to the attention of:

Anielka Sanchez Godinez
Assistant Attorney General
Labor Bureau
28 Liberty Street, 15th Floor
New York, New York 10005
Anielka.SanchezGodinez@ag.ny.gov

Instructions for the wire transfer will be provided to Crown. The payment and all correspondence related to this AOD must reference "AOD No. 21-080."

20. The OAG has the sole discretion to determine which employees shall be eligible for restitution and damages and to determine the amount of such restitution and damages. Crown agrees to cooperate to locate current and former employees who may be eligible for restitution.

Paid Time Off Benefits to Employees

21. Crown will provide additional paid time off (the "Additional Paid Time Off") and additional sick time (the "Additional Sick Time") to current employees who were also employed between April 1, 2014 through December 31, 2018 in the amount of approximately \$411,000 (four

hundred eleven thousand dollars) to satisfy a portion of the \$1,578,050 Settlement Amount, which will be divided by apportioning 1/3 of the amount as Additional Sick Time and 2/3 of the amount as Additional Paid Time Off.

22. Crown will provide the Additional Paid Time Off and Additional Sick Time in accordance with the Additional Sick Time and Additional PTO Memo (the "Memo"), which is subject to OAG approval. Crown will distribute the Memo to employees within 30 days of OAG approval.

23. Crown will conduct a self-audit of paid time off accruals within 30 days of the Effective Date. The results of the self-audit, including names and accrual amounts, as well as the Additional Paid Time Off and Additional Sick Time for each employee provided pursuant to this AOD, will be supplied to the OAG within 7 days of completion.

24. For current employees with accrued time off and who will receive Additional Paid Time Off and Additional Sick Time, Crown will notify each employee in writing of his or her accrual amounts and of the Additional Paid Time Off and Additional Sick Time available to him or her pursuant to the terms of this AOD at the time the Memo is provided to the employees, as approved by the OAG, and provide to employees the Labor Bureau's phone number and e-mail address where to report violations of this AOD, including Crown's failure to provide the Additional Paid Time Off and Additional Sick Time as set forth in paragraphs 22 through 26. The Labor Bureau's e-mail address is Labor.Bureau@ag.ny.gov, and the phone number is 212-416-8700.

25. Employees shall carryover any unused amount of Additional Paid Time Off and Additional Sick Time provided pursuant to this AOD to subsequent years, and in the event the

employee's employment with Crown ends, Crown must compensate the employee for the unused Additional Paid Time Off and unused Additional Sick Time.

26. To secure the payment described in paragraphs 17 and 18, and the value of the Additional Paid Time Off and Additional Sick Time described in paragraph 21, Crown will execute and deliver, at the time of execution and delivery of this AOD, the accompanying Affidavit of Confession of Judgment (attached hereto as Exhibit A), confessing judgment for the Settlement Amount of \$1,578,050 less any amounts paid by Crown, plus collection of fees of 22% (twenty two) percent of any unpaid Settlement Amount at the time of any subsequent default, plus statutory costs of \$15.00. Crown agrees to execute another Affidavit of Confession of Judgment (the "Second Affidavit of Confession of Judgment"), confessing judgment for the amount of the Settlement Amount that remains unpaid three years from the execution of the Affidavit of Confession of Judgment attached as Exhibit A. Crown agrees to execute and provide to the OAG the Second Affidavit of Judgment no later than ^{January} February 24, 2025.

27. In the event Crown defaults or fails to timely and properly make payment as set forth in paragraphs 17 and 18, or fails to provide the Additional Paid Time Off and Additional Sick Time as set forth in paragraphs 21 through 25, the OAG will provide Crown 15 days' written notice, by first class mail, and via email at the email address provided in paragraph 50, to cure such default or failure, and upon the failure of Crown to cure such default or failure, the OAG may file and enter the applicable Affidavit of Confession of Judgment, at any time, and without further notice, against Crown, less any amounts paid by Crown pursuant to this AOD prior to the default, plus the collection fees and statutory costs described above.

28. This AOD will expire six (6) years after the Effective date, except that the OAG may, in its sole discretion, extend the AOD term to three (3) additional years upon a determination that Crown has not complied with this AOD.

Non-Dischargeable Judgment

29. In the event of bankruptcy, Crown expressly agrees not to seek discharge or extinguish the amounts owed as part of this AOD.

Monitoring and Oversight

30. Periodic Compliance Reports: Crown shall provide to the OAG a report detailing its compliance with the requirements set forth in this AOD, paragraphs 12 to 16 (Programmatic Relief), and paragraphs 21 to 25 (Paid Time Off Benefits to Employees), to be submitted to the OAG within 45 days of the Effective Date. This report shall be in writing and shall set forth in detail the manner and form of compliance with this AOD and shall be signed by Crown.

31. Thereafter, starting on September 1, 2022, a report of compliance shall be submitted to the OAG every six months for the next six years detailing how Crown has met its Wage Parity obligations for the previous 6-month period. Along with each biannual report, Crown shall submit the following supporting documents to the OAG:

- a. A statement explaining the cost per hour of each benefit Crown claims as compensation under the Wage Parity Act;
- b. Documents showing the cost per hour of each benefit Crown claims as compensation under the Wage Parity Act, for example, a copy of the Administrative Services Agreement with a third-party administrator;
- c. A statement of Wage Parity hours and expenses incurred for any benefits Crown claims as compensation under the Wage Parity Act for the previous six months;

- d. Payroll records reporting company totals for Wage Parity Act hours worked for the previous six months, wages paid for those hours, and, if Crown chooses to satisfy any portion of its Wage Parity Act obligations by providing paid time off, any paid time off accrued or used by aides, as well as any payouts for paid time off;
- e. Documents showing the Additional Paid Time Off and Additional Sick Time used by employees during the previous six months and the Additional Paid Time and Additional Sick Time that remains unused; and
- f. Documents sufficient to verify amounts paid by Crown for any benefits that Crown claims as compensation under the Wage Parity Act, including but not limited to, health, transit, and 401(k) benefits. Examples of such verification documents include copies of cancelled checks, wire transfers, bank account statements and invoices.
- g. In addition to the materials submitted pursuant to subparagraphs a through f, Crown shall submit to the OAG when it becomes due to the Managed Long Term Care Plans (“MLTCPs”) with which it contracts, a copy of the materials submitted to the MLTCPs on an annual basis pursuant to N.Y. Pub. Health Law § 3614-c(6), as amended by section 1 of part OO of Chapter 56 of the laws of 2020, to verify compliance with the terms of the Wage Parity Act, including:
 - i. A written certification, verified by oath, in which Crown attests to its compliance with the Wage Parity Act;
 - ii. An annual compliance statement of wage parity hours and expenses on a form provided by the New York Department of Labor; and

iii. The independent auditor's statement verifying Crown's Wage Parity hours and expenses on a form provided by the New York Department of Labor.

32. In any case where the circumstances warrant, the OAG may require Crown to file an interim report of compliance upon 30 days' notice.

33. Periodic Certification of Compliance: Crown shall provide the OAG with a certification affirming its compliance with the requirements set forth in this AOD, paragraphs 12 to 16 (Programmatic Relief) and paragraphs 21 to 25 (Paid Time Off Benefits to Employees), to be submitted to the OAG within 45 days of the Effective Date. This certification shall be in writing and signed by Crown. Thereafter, a certification of compliance shall be submitted to the OAG every six months, at the same time as the periodic reports described in paragraphs 30 and 31, for the following six (6) years. In any case where the circumstances warrant, the OAG may require Crown to file an interim certification of compliance upon 30 days' notice.

34. Certification of Compliance on Demand: At any time through the Effective Period of this AOD, upon 30 days' written notice from the OAG, Crown shall provide the OAG with a certification affirming its compliance with the requirements set forth in this AOD, paragraphs 12 to 16 (Programmatic Relief) and paragraphs 21 to 25 (Paid Time Off Benefits to Employees).

35. Crown expressly agrees and acknowledges that a default in the performance of any obligation under this AOD during the Effective Period is a violation of the AOD, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 7, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the AOD has been violated shall constitute prima facie proof of the statutory violations described in paragraphs 5 and 6 pursuant to Executive Law § 63(15). Notwithstanding the foregoing, upon any default in the performance of any obligation during the Effective Period, the OAG shall give Crown written

notice of such default and Crown shall be afforded 15 days from the date written notice is received by Crown in which to cure such default.

No Retaliation

36. Crown agrees that it shall comply with NYLL § 215 and shall not in any manner discriminate or retaliate against any of its employees, including but not limited to employees or former employees who cooperated or are perceived to have cooperated with the OAG's investigation of this matter. Crown agrees not to discharge, refuse to hire, or take any adverse action against any of these employees except for legitimate, non-discriminatory reasons unrelated to the investigation or to any past, present, or future participation in any activities involving the exercise of their legal rights under the NYLL and New York Codes, Rules, and Regulations.

Ongoing Cooperation

37. Crown agrees to cooperate with all ongoing requests by the OAG for information related to this investigation and to ensure compliance with this AOD. Crown also agrees to cooperate fully and truthfully with the OAG's investigations of individuals and entities that are not a party to this AOD, and Crown's cooperation will not require any action inconsistent with a reasonably asserted objection or privilege. Upon reasonable notice, Crown shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Crown further agrees to furnish to the OAG, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of its practices relating to payment of wages described in paragraphs 5 and 6, that it has undertaken, or that has been performed by

another on its behalf. Crown agrees that the OAG shall have full access to the contact information of its employees to reach them through mail, telephone, or electronic means.

Penalty for Non-Compliance

38. If an OAG inspection shows a material violation of paragraphs 12 to 16 (Programmatic Relief) and paragraphs 21 to 25 (Paid Time Off Benefits to Employees) of this AOD, Crown agrees to pay \$15,000 in liquidated damages for each category of violation, separate and apart from any other penalty or damages associated with the violation, provided that prior to any assessment of liquidated damages, Crown shall be notified of the violation in writing, effective two days after mailing via first class mail, after which Crown shall have 15 days to cure the violation.

MISCELLANEOUS

Representations and Warranties

39. The OAG has agreed to the terms of this AOD based on, among other things, the representations made to the OAG by Crown and the OAG's own factual investigation as set forth in paragraphs 5 and 6 above. Crown represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Crown or its counsel are later found to be inaccurate or misleading, this AOD is voidable by the OAG in its sole discretion.

40. No representation, inducement, promise, understanding, condition, or warranty not set forth in this AOD has been made or relied upon by Crown in agreeing to this AOD.

41. Crown represents and warrants, through the signatures below, that the terms and conditions of this AOD are duly approved and execution of this AOD is duly authorized.

General Principles

42. Unless a term limit for compliance is otherwise specified within this AOD, Crown's obligations under this AOD are enduring. Nothing in this AOD shall relieve Crown of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

43. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Crown violates the AOD after the Effective Date.

44. This AOD may not be amended except by an instrument in writing signed on behalf of the parties to this AOD.

45. In the event that any one or more of the provisions contained in this AOD shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this AOD.

46. Crown acknowledges that it has entered this AOD freely and voluntarily and upon due deliberation with the advice of counsel.

47. This AOD shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

48. The AOD and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

49. The Effective Date of this AOD shall be ^{March} February 24, 2022. The end date shall be ^{March} February 24, 2028.

50. All notices, reports, requests, and other communications to any party pursuant to this AOD shall be in writing and shall be directed as follows:

From Crown to the Attorney General:

New York State Office of the Attorney General
Anielka Sanchez Godinez, Assistant Attorney General
Labor Bureau
28 Liberty Street, 15th Floor
New York, New York 10005

Or

Anielka.SanchezGodinez@ag.ny.gov

From the Attorney General to Crown:

O'Connell & Aronowitz
Attn: Richard Harrow
54 State Street, 9th Floor
Albany, New York 12207

Or

Rharrow@oalaw.com

Any changes in the person to whom communications should be specifically directed shall be made in writing in advance of the change.

51. This AOD may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, this AOD is executed by the parties hereto on ~~February 28~~, ^{March 24,}
2022.

LETITIA JAMES

Attorney General of the State of New York

By: *[Signature]*
Anielka Sanchez Godinez
Assistant Attorney General
Labor Bureau
28 Liberty Street, 15th Floor
New York, New York 10005
Phone: (212) 416-6280

Dated: ^{March} February 24, 2022

CROWN OF LIFE CARE NY, LLC

By: *[Signature]*
Name: *Toby Kahon*
Title: *Member*
Dated: *2/28/22*