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FIRST REGULAR SESSION-2017

Legislative Document

No. 1466

S.P. 512

In Senate, April 18, 2017

**An Act To Address Severe and Ongoing Shortfalls in the Funding of
Direct Care Workers in Long-term Care Settings and To Establish
the Commission To Study Long-term Care Workforce Issues**

(EMERGENCY)

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator JACKSON of Aroostook.
Cosponsored by Speaker GIDEON of Freeport and
Senators: BREEN of Cumberland, LIBBY of Androscoggin, MAKER of Washington,
Representatives: ESPLING of New Gloucester, GATTINE of Westbrook, GOLDEN of
Lewiston, HERBIG of Belfast, MARTIN of Eagle Lake.

1 **Emergency preamble.** Whereas, acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** the people of the State of Maine need and deserve a variety of well-
4 planned and financially stable long-term care services in home-based and community-
5 based care settings and in residential care and nursing facilities in their communities; and

6 **Whereas,** in order to provide high-quality care to Maine's elderly and disabled
7 persons in a dignified and professional manner that is sustainable into the future through a
8 spectrum of long-term care services, prompt action is needed to correct chronic
9 underfunding and to complete a thoughtful and thorough planning process; and

10 **Whereas,** additional reimbursement under the MaineCare program is immediately
11 needed to fairly and properly compensate facilities and programs for the impact of recent
12 changes in the minimum wage laws; and

13 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
14 the meaning of the Constitution of Maine and require the following legislation as
15 immediately necessary for the preservation of the public peace, health and safety; now,
16 therefore,

17 **Be it enacted by the People of the State of Maine as follows:**

18 **Sec. 1. Rate increases for certain personal care and related services.** The
19 Department of Health and Human Services shall amend its rules in 10-144, Chapter 101:
20 MaineCare Benefits Manual, Chapter III, Section 12, Allowances for Consumer-Directed
21 Attendant Services; Chapter III, Section 19, Home and Community Benefits for Elderly
22 and Adults with Disabilities; and Chapter III, Section 96, Private Duty Nursing and
23 Personal Care Services; and in 10-149, Chapter 5: Office of Aging and Disability
24 Services Policy Manual, Section 63, In-Home and Community Support Services for
25 Elderly and Other Adults; and 14-197, Chapter 11: Consumer Directed Personal
26 Assistance Services, to provide for the following rate increases.

27 **1. Rate increases for fiscal year 2017-18 based on Burns & Associates, Inc. rate**
28 **review.** For the state fiscal year ending June 30, 2018, the MaineCare payment rates for
29 personal care and related services under each of the provisions under this section must be
30 increased to the levels necessary to fully fund and implement the recommendations in
31 "Rate Review for Personal Care and Related Services: Final Rate Models," the report
32 prepared by Burns & Associates, Inc. dated February 1, 2016.

33 **2. Rate increases for fiscal year 2018-19.** For the state fiscal year ending June 30,
34 2019, the MaineCare payment rates for personal care and related services under each of
35 the provisions under this section calculated under subsection 1 must be increased by 10%.

36 **Sec. 2. Rate increases for adult family care services, adult day services**
37 **and homemaker services.** The Department of Health and Human Services shall
38 amend its rules in 10-144, Chapter 101: MaineCare Benefits Manual, Chapter III, Section
39 2, Adult Family Care Services; Chapter III, Section 26, Day Health Services; and in 10-

149, Chapter 5: Office of Aging and Disability Services Policy Manual, Section 61, Adult Day Services and Section 69, Independent Support Services Program, to provide for the following rate increases.

1. Rate increases for fiscal year 2017-18. For the state fiscal year ending June 30, 2018, the MaineCare payment rates attributable to wages and salaries for personal care and related services under each of the provisions under this section must be increased by 10%.

2. Rate increases for fiscal year 2018-19. For the state fiscal year ending June 30, 2019, the MaineCare payment rates attributable to wages and salaries for personal care and related services under each of the provisions under this section calculated under subsection 1 must be increased by 10%.

Sec. 3. Rate increases for nursing facilities. The Department of Health and Human Services shall amend its rule in 10-144, Chapter 101: MaineCare Benefits Manual, Chapter III, Section 67, Principles of Reimbursement for Nursing Facilities to provide for the following rate changes to address the recent changes in the minimum wage laws and the ongoing shortfall in funding needed to compensate direct care workers.

1. Rate increases for fiscal year 2017-18. For the state fiscal year ending June 30, 2018, an extraordinary circumstance supplemental allowance must be made as required by section 34 of the Principles of Reimbursement for Nursing Facilities equal to 10% of the portion of each facility's prospective and final prospective rate that is attributable to wages and wage-related benefits in both the direct care cost component and routine care cost component. This supplemental allowance must be provided as part of each facility's prospective rate, notwithstanding any otherwise applicable caps or limits on reimbursement. This supplemental allowance must also be allowed and paid at final audit to the full extent that the facility has reported increased costs for wages and wage-related benefits, notwithstanding any otherwise applicable caps or limits on reimbursement, including without limitation the amount of the supplemental allowance added to prospective payment rates.

2. Rate increases for fiscal year 2018-19. For the state fiscal year ending June 30, 2019, an additional extraordinary circumstance supplemental allowance must be made as required by section 34 of the Principles of Reimbursement for Nursing Facilities equal to 10% of the portion of each facility's prospective and final prospective rate that is attributable to wages and wage-related benefits in both the direct care cost component and routine care cost component. This supplemental allowance must be provided as part of each facility's prospective rate, notwithstanding any otherwise applicable caps or limits on reimbursement. This supplemental allowance must also be allowed and paid at final audit to the full extent that the facility has reported increased costs for wages and wage-related benefits, notwithstanding any otherwise applicable caps or limits on reimbursement, including without limitation the amount of the supplemental allowance added to prospective payment rates.

Sec. 4. Rate increases for residential care facilities. The Department of Health and Human Services shall amend its rules in 10-144, Chapter 101: MaineCare

1 Benefits Manual, Chapter III, Section 97, Appendix C, Principles of Reimbursement for
2 Medical and Remedial Service Facilities; and 10-144, Chapter 115: Principles of
3 Reimbursement for Residential Care Facilities - Room and Board Costs to provide for the
4 following rate changes.

5 **1. Rate increase for fiscal year 2017-18.** For the state fiscal year ending June 30,
6 2018, additional reimbursement by a supplemental payment of 10% of the portion of the
7 facility's per diem rate that is attributable to wages, wage-related benefits and workers'
8 compensation must be added to the per diem rate until the department adjusts the direct
9 care pricer, the routine limit and the personal care services limit, as applicable, to
10 incorporate this 10% increase going forward. This increase must be provided as part of
11 each facility's per diem rate notwithstanding any otherwise applicable caps or limits on
12 reimbursement. This supplemental payment must also be allowed and paid at final audit
13 to the full extent that the facility has reported increased costs for wages, wage-related
14 benefits and workers' compensation, notwithstanding any otherwise applicable caps or
15 limits on reimbursement, including without limitation the amount of the supplemental
16 payment added to prospective payment rates.

17 **2. Rate increase for fiscal year 2018-19.** For the state fiscal year ending June 30,
18 2019, additional reimbursement by a supplemental payment of 10% over the payment
19 rate calculated under subsection 1 of the portion of the facility's per diem rate that is
20 attributable to wages, wage-related benefits and workers' compensation must be added to
21 the per diem rate until the department adjusts the direct care pricer, the routine limit and
22 the personal care services limit, as applicable, to incorporate this 10% increase going
23 forward. This increase must be provided as part of each facility's per diem rate
24 notwithstanding any otherwise applicable caps or limits on reimbursement. This
25 supplemental payment must also be allowed and paid at final audit to the full extent that
26 the facility has reported increased costs for wages, wage-related benefits and workers'
27 compensation, notwithstanding any otherwise applicable caps or limits on
28 reimbursement, including without limitation the amount of the supplemental payment
29 added to prospective payment rates.

30 **Sec. 5. Commission To Study Long-term Care Workforce Issues.**
31 Notwithstanding Joint Rule 353, the Commission To Study Long-term Care Workforce
32 Issues, referred to in this section as "the commission," is established.

33 **1. Members.** The commission consists of up to 18 members as follows:

34 A. Two members of the Senate appointed by the President of the Senate, including a
35 member from each of the 2 parties holding the largest number of seats in the
36 Legislature;

37 B. Three members of the House of Representatives appointed by the Speaker of the
38 House, including a member from each of the 2 parties holding the largest number of
39 seats in the Legislature; and

40 C. Up to 13 members who possess expertise in the subject matter of the study as
41 follows:

42 (1) A direct care worker appointed by the President of the Senate;

- 1 (2) A provider of home-based long-term care who is a member of a statewide
2 association representing home-based long-term care providers appointed by the
3 President of the Senate;
- 4 (3) A representative of a statewide association representing nonprofit housing and
5 senior service programming appointed by the President of the Senate;
- 6 (4) A representative of an organization providing services to individuals with
7 intellectual disabilities and autism including employment services and long-term
8 home supports appointed by the President of the Senate;
- 9 (5) A provider of facility-based long-term care who is a member of a statewide
10 association representing facility-based long-term care providers appointed by the
11 Speaker of the House;
- 12 (6) A representative of an organization providing statewide homemaker services
13 through the state-funded independent support services program within the
14 Department of Health and Human Services appointed by the Speaker of the
15 House;
- 16 (7) A representative of an institution of higher education engaged in workforce
17 development appointed by the Speaker of the House;
- 18 (8) A representative of a service coordination agency providing service
19 coordination to people receiving home-based and community-based long-term
20 care appointed by the Speaker of the House;
- 21 (9) A representative of an organization promoting independent living for
22 individuals with disabilities appointed by the Speaker of the House;
- 23 (10) A representative of a business that acts as a labor intermediary helping
24 unemployed and underemployed people obtain employment appointed by the
25 Speaker of the House;
- 26 (11) The executive director of the long-term care ombudsman program described
27 under the Maine Revised Statutes, Title 22, section 5106, subsection 11-C;
- 28 (12) The Commissioner of Health and Human Services, or the commissioner's
29 designee, who may be invited to participate; and
- 30 (13) The Commissioner of Labor, or the commissioner's designee, who may be
31 invited to participate.

32 **2. Chairs and subcommittees.** The first-named Senate member is the Senate chair
33 and the first-named House of Representatives member is the House chair of the
34 commission. The chairs of the commission are authorized to establish subcommittees to
35 work on the duties listed in subsection 4 and to assist the commission. The
36 subcommittees must be composed of members of the commission and interested persons
37 who are not members of the commission and who volunteer to serve on the
38 subcommittees without reimbursement.

39 **3. Appointments.** All appointments must be made no later than 30 days following
40 the effective date of this Act. The appointing authorities shall notify the Executive
41 Director of the Legislative Council once all appointments have been completed. After

1 appointment of all members and after adjournment of the First Regular Session of the
2 128th Legislature, the chairs shall call and convene the first meeting of the commission.
3 If 30 days or more after the effective date of this Act a majority of but not all
4 appointments have been made, the chairs may request authority and the Legislative
5 Council may grant authority for the commission to meet and conduct its business.

6 **4. Directive of commission.** The commission shall study and make policy
7 recommendations in each of the following areas:

- 8 A. Measuring current demand for direct care workers and projecting future needs;
- 9 B. Developing a campaign and statewide recruitment strategies to encourage more
10 people to work in facility-based and home-based long-term care;
- 11 C. Supporting career ladders throughout various long-term care settings;
- 12 D. Identifying education needs and methods to fill education needs for direct care
13 workers;
- 14 E. Identifying barriers to hiring and methods to overcome barriers to hiring;
- 15 F. Developing strategies to improve the quality of long-term care jobs; and
- 16 G. Increasing opportunities for shared staffing among long-term care providers.

17 The commission shall make policy recommendations for public and private funding
18 mechanisms to implement the commission's recommendations.

19 **5. Program.** The commission shall make recommendations for the establishment of a
20 program that will contribute to long-term care direct care workers' postsecondary
21 education in related fields.

22 **6. Pilot program.** The commission shall make recommendations for the
23 establishment of a pilot program to pool part-time home care workers' hours for purposes
24 of providing greater employment opportunity and obtaining employee benefits.

25 **7. Staffing.** The Legislative Council shall provide necessary staffing services to the
26 commission.

27 **8. Administration.** The Commissioner of Health and Human Services, the State
28 Auditor and the State Budget Officer shall provide necessary information and assistance
29 to the commission as required for the commission's duties.

30 **9. Report.** No later than October 15, 2017, the commission shall submit a report that
31 includes its findings and recommendations pursuant to subsections 4 to 6, including
32 suggested legislation, to the Joint Standing Committee on Health and Human Services.
33 The joint standing committee may report out a bill regarding the subject matter of the
34 report to the Second Regular Session of the 128th Legislature.

35 **Emergency clause.** In view of the emergency cited in the preamble, this
36 legislation takes effect when approved.

SUMMARY

This bill directs the Department of Health and Human Services to increase MaineCare payment rates for certain personal care and related services, including those set forth in 10-144, Chapter 101: MaineCare Benefits Manual, Chapter III, Section 12, Allowances for Consumer-Directed Attendant Services; Chapter III, Section 19, Home and Community Benefits for Elderly and Adults with Disabilities; and Chapter III, Section 96, Private Duty Nursing and Personal Care Services; and in 10-149, Chapter 5: Office of Aging and Disability Services Policy Manual, Section 63, In-Home and Community Support Services for Elderly and Other Adults; and 14-197, Chapter 11: Consumer Directed Personal Assistance Services. For fiscal year 2017-18, these payment rates will be increased to the levels necessary to fully fund and implement the recommendations in "Rate Review for Personal Care and Related Services: Final Rate Models," the report prepared by Burns & Associates, Inc. dated February 1, 2016. For fiscal year 2018-19, these payment rates are increased by an additional 10%.

The bill directs the department to increase MaineCare payment rates for certain adult family care services, adult day services and homemaker services, including those set forth in 10-144, Chapter 101: MaineCare Benefits Manual, Chapter III, Section 2, Adult Family Care Services; Chapter III, Section 26, Day Health Services; and in 10-149 Chapter 5: Office of Aging and Disability Services Policy Manual, Section 61, Adult Day Services and Section 69, Independent Support Services Program. For fiscal year 2017-18, these payment rates will be increased by 10%. For fiscal year 2018-19, these payment rates will be increased by an additional 10%.

The bill directs the department to increase MaineCare payment rates for nursing facilities set forth in 10-144, Chapter 101: MaineCare Benefits Manual, Chapter III, Section 67, Principles of Reimbursement for Nursing Facilities. For fiscal year 2017-18, an extraordinary circumstance supplemental allowance will be made that is equal to 10% of the portion of each facility's prospective and final prospective rate that is attributable to wages and wage-related benefits in both the direct care cost component and routine care cost component. For fiscal year 2018-19, an additional extraordinary circumstance supplemental allowance of 10% will be made. In each year, this supplemental allowance will be provided as part of each facility's prospective rate, notwithstanding any otherwise applicable caps or limits on reimbursement. This supplemental allowance will also be allowed and paid at final audit to the full extent that the facility has reported increased costs for wages and wage-related benefits, notwithstanding any otherwise applicable caps or limits on reimbursement, including without limitation the amount of the supplemental allowance added to prospective payment rates.

The bill directs the department to increase MaineCare payment rates for facilities set forth in 10-144, Chapter 101: MaineCare Benefits Manual, Chapter III, Section 97, Appendix C, Principles of Reimbursement for Medical and Remedial Service Facilities; and 10-144, Chapter 115: Principles of Reimbursement for Residential Care Facilities - Room and Board Costs. For fiscal year 2017-18, a supplemental payment will be provided equal to 10% of the portion of the facility's per diem rate that is attributable to wages, wage-related benefits and workers' compensation. For fiscal year 2018-19, an additional supplemental payment of 10% will be provided. In each year, this

1 supplemental payment will be added to the per diem rate until the department adjusts the
2 direct care pricer, the routine limit and the personal care services limit, as applicable, to
3 incorporate this 10% increase going forward. In each year, this increase will be provided
4 as part of each facility's per diem rate notwithstanding any otherwise applicable caps or
5 limits on reimbursement. In each year, this supplemental payment will also be allowed
6 and paid at final audit to the full extent that the facility has reported increased costs for
7 wages, wage-related benefits and workers' compensation, notwithstanding any otherwise
8 applicable caps or limits on reimbursement, including without limitation the amount of
9 the supplemental payment added to prospective payment rates.

10 The bill also establishes the Commission To Study Long-term Care Workforce
11 Issues.