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House of Representatives, April 27, 2021

An Act To Implement the Recommendations of the Commission To Study Long-term Care Workforce Issues

(EMERGENCY)

Received by the Clerk of the House on April 23, 2021. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in black ink, reading "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative FAY of Raymond.

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

Whereas, direct care workers provide a valuable societal service for the people of Maine and often are grossly underpaid, to the disadvantage of the workers themselves and the people who they serve; and

Whereas, provision for the relief of direct care workers was submitted through legislation in the Second Regular Session of the 129th Legislature, but the sudden adjournment of the session due to the COVID-19 pandemic resulted in the legislation not becoming law; and

Whereas, providing relief in wages for direct care workers is now even more pressing because of the delay; and

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

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

PART A

Sec. A-1. 22 MRSA §1708, sub-§5 is enacted to read:

5. Reimbursement rates for in-home and community support services. The department shall establish rules concerning MaineCare reimbursement rates for in-home and community support services as defined in section 7302, subsection 5 that establish the base year for those services every 2 years and increase the rate of reimbursement beginning July 1, 2022 and every year thereafter until June 30, 2026. For the state fiscal year beginning July 1, 2026, the base year for each in-home and community support services provider is its fiscal year that ended in the calendar year 2024. For state fiscal years beginning on or after July 1, 2027, subsequent rebasing must be based on the most recent cost report filings available. The department may provide a mechanism for subsequent adjustments to base year costs to reflect any material difference between as-filed cost reports used in rebasing and subsequent determinations of audited, allowable costs for the same fiscal period. The department's rules must provide that, beginning in the state fiscal year beginning July 1, 2026, the MaineCare reimbursement rates set for each rebasing year must include an inflation adjustment for a cost-of-living percentage change in in-home and community support services reimbursement each year in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index. Any rebasing done pursuant to this subsection may not result in an in-home and community support services provider receiving a MaineCare reimbursement rate that is lower than the rate in effect on June 30, 2026.

Sec. A-2. 22 MRSA c. 1627 is enacted to read:

CHAPTER 1627

DIRECT CARE WORKER WAGES

1 **§7401. Definitions**

2 As used in this chapter, unless the context otherwise indicates, the following terms
3 have the following meanings.

4 **1. Activities of daily living.** "Activities of daily living" means tasks routinely
5 performed by a person to maintain bodily functions, including bed mobility, transfers,
6 locomotion, dressing, eating, toileting, bathing and personal hygiene.

7 **2. Direct access.** "Direct access" means, with respect to an individual who is receiving
8 services from a direct care worker in an institutional setting or in a home or community
9 setting, access to the individual's property, personally identifiable information, financial
10 information or resources or physical access to the individual.

11 **3. Direct care worker.** "Direct care worker" means an individual who by virtue of
12 employment generally provides to individuals direct contact assistance with activities of
13 daily living or instrumental activities of daily living or has direct access to provide care and
14 services to clients, patients or residents regardless of the setting.

15 **4. In-home and community support services.** "In-home and community support
16 services" means health and social services and other assistance required to enable adults
17 with long-term care needs to remain in their places of residence or group homes. These
18 services include, but are not limited to, self-directed care services; home health aide
19 services; personal care assistance services; companion and attendant services; homemaker
20 services; respite care; and other appropriate and necessary social services.

21 **5. Home or community setting.** "Home or community setting" means a place of
22 residence or group home where adults with long-term care needs receive in-home and
23 community support services.

24 **6. Institutional setting.** "Institutional setting" means residential care facilities,
25 licensed pursuant to chapter 1664; intermediate care and skilled nursing facilities and units
26 and hospitals, licensed pursuant to chapter 405; and state institutions for individuals who
27 have intellectual disabilities or autism or other related conditions.

28 **7. Instrumental activities of daily living.** "Instrumental activities of daily living"
29 includes, but is not limited to, preparing or receiving of a main meal, taking medication,
30 using the telephone, handling finances, banking, shopping, routine housework, laundry and
31 getting to appointments.

32 **8. Self-directed care services.** "Self-directed care services" means services procured
33 and directed by the person receiving services or the person's surrogate that allow the person
34 to reenter or remain in the community and to maximize independent living opportunities.
35 "Self-directed care services" includes the hiring, firing, training and supervision of direct
36 care workers to assist with activities of daily living and instrumental activities of daily
37 living.

38 **§7402. Direct care worker minimum wage**

39 Starting January 1, 2022, the minimum hourly wage paid to a direct care worker must
40 be no less than 125% of the minimum wage established in Title 26, section 664, subsection
41 1. Increases to the minimum wage for direct care workers must begin on January 1st of
42 each year at the same time as any increase in the minimum wage takes place.

43 **§7403. Rulemaking**

The department shall adopt rules providing reimbursement rates under this chapter that take into account the costs of providing the direct care worker minimum wage required in section 7402. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. A-3. 26 MRSA §664, sub-§1, as amended by IB 2015, c. 2, §1, is further amended to read:

1. Minimum wage. The minimum hourly wage is \$7.50 per hour. Starting January 1, 2017, the minimum hourly wage is \$9.00 per hour; starting January 1, 2018, the minimum hourly wage is \$10.00 per hour; starting January 1, 2019, the minimum hourly wage is \$11.00 per hour; and starting January 1, 2020, the minimum hourly wage is \$12.00 per hour. On January 1, 2021 and each January 1st thereafter, the minimum hourly wage then in effect must be increased by the increase, if any, in the cost of living. The increase in the cost of living must be measured by the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the Consumer Price Index for Urban Wage Earners and Clerical Workers, CPI-W, for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of 5¢. If the highest federal minimum wage is increased in excess of the minimum wage in effect under this section, the minimum wage under this section is increased to the same amount, effective on the same date as the increase in the federal minimum wage, and must be increased in accordance with this section thereafter. This subsection does not apply to a direct care worker under Title 22, section 7402.

Sec. A-4. Department of Health and Human Services to adopt rules to provide reimbursement rates sufficient for structural costs. The Department of Health and Human Services shall adopt rules to increase reimbursement rates under rule Chapter 101: MaineCare Benefits Manual and any state-funded programs to take into account costs of providing care and services in conformity with applicable state and federal laws, rules, regulations, training requirements and quality and safety standards, including, but not limited to: costs of increases in wages for direct care workers pursuant to the Maine Revised Statutes, Title 22, chapter 1627; reimbursement rates for in-home and community support services pursuant to Title 22, section 1708, subsection 5; increases in minimum wages for any other workers pursuant to Title 26, section 664, subsection 1; earned paid leave pursuant to Title 26, section 637; background checks required pursuant to Title 22, chapter 1691; and electronic visit verification required under the federal 21st Century Cures Act, Public Law 114-255, Section 12006. Reimbursement rates under this section may not be lower than rates in effect on the effective date of this Act. The department shall consult with providers and other stakeholders that the department determines appropriate to determine appropriate reimbursement levels for services. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except for rules that amend Chapter 101: MaineCare Benefits Manual, Chapter III, Section 97, which are major substantive rules.

PART B

Sec. B-1. 5 MRSA §12004-I, sub-§47-J is enacted to read:

47-J.

Sec. B-2. 22 MRSA §5307 is enacted to read:

§5307. Long-term Care Workforce Oversight Advisory Committee

The Long-term Care Workforce Oversight Advisory Committee, as established in Title 5, section 12004-I, subsection 47-J and referred to in this section as "the oversight committee," is established to provide advice and oversight to the department and the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding long-term care workforce issues.

1. Membership. The oversight committee consists of 10 members as follows:

A. Eight members, appointed by the commissioner, who are employers and providers of services in the long-term care industry and employ direct care workers who provide assistance with activities of daily living as defined in section 7302, subsection 1-A or instrumental activities of daily living as defined in section 7302, subsection 6-A to clients, patients or residents, in institutional and home or community settings;

B. One member, appointed by the commissioner, who is a recipient of self-directed care services as defined in section 7401, subsection 8; and

C. The long-term care ombudsman as described in section 5107-A.

For the purposes of this subsection, "direct care worker" has the same meaning as in section 7401, subsection 3.

2. Terms; vacancy. Members of the oversight committee are appointed to staggered 2-year terms so that the terms of 4 members representing providers expire on July 1st of each year. If the commissioner fails to make an appointment prior to the expiration of a member's term, that member continues to serve until the commissioner makes an appointment for the remainder of that term. If a vacancy occurs prior to the expiration of a specified term, the commissioner shall appoint a person to serve the remainder of that term.

3. Duties. The oversight committee has the following duties:

A. Collect data from the department relating to the number of hours of services provided by direct care workers, the number of approved hours for which staffing cannot be provided due to staffing shortages, vacancies for direct care worker positions and the number of unfilled beds in residential care facilities licensed under chapter 1664 and nursing facilities licensed under chapter 405;

B. Compile data available from the Department of Labor relating to current and future needs for direct care workers;

C. Review the quarterly reports under subsection 5 from the department, the Department of Labor and the Department of Education on implementing recommendations provided to the departments and the joint standing committee of the Legislature having jurisdiction over health and human services matters relating to long-term care workforce issues and address barriers to implementing those recommendations; and

1 D. Make recommendations to the department and the joint standing committee of the
2 Legislature having jurisdiction over health and human services matters on proposals to
3 increase the long-term care workforce and address shortages in services.

4 **4. Meetings; report.** The oversight committee shall meet at least quarterly and submit
5 an annual report no later than January 2nd to the joint standing committee of the Legislature
6 having jurisdiction over health and human services matters describing the oversight
7 committee's activities and recommendations.

8 **5. Quarterly reports from departments.** Beginning January 1, 2022, the department,
9 the Department of Labor and the Department of Education shall each submit a quarterly
10 report to the oversight committee on the respective department's efforts and progress in
11 implementing recommendations of the oversight committee and the recommendations of
12 the Commission To Study Long-term Care Workforce Issues established by Public Law
13 2019, chapter 343, Part BBBB, section 1.

14 This subsection is repealed January 1, 2027.

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

17 SUMMARY

18 This bill implements the recommendations of the Commission To Study Long-term
19 Care Workforce Issues, which was established by Public Law 2019, chapter 343, Part
20 BBBB, section 1. The bill does the following.

21 1. It directs the Department of Health and Human Services to establish a 2-year
22 rebasing requirement to set and increase reimbursement rates for in-home and community
23 support services.

24 2. It requires direct care workers across the long-term care spectrum to be paid no less
25 than 125% of the minimum wage. It requires the Department of Health and Human Services
26 to adopt rules that take into account the cost of this increased wage in its reimbursement
27 rates.

28 3. It requires the Department of Health and Human Services to adopt rules to increase
29 reimbursement rates under rule Chapter 101: MaineCare Benefits Manual and any state-
30 funded programs to take into account costs of providing care and services in conformity
31 with applicable state and federal laws, rules, regulations, training requirements and quality
32 and safety standards, including, but not limited to, increases in the minimum wage for
33 workers other than direct care workers, earned paid leave, electronic visit verification,
34 background checks and other costs that are not provided for in the current reimbursement
35 rates and to not reduce a reimbursement rate below that on the effective date of this bill.

36 4. It establishes the Long-term Care Workforce Oversight Advisory Committee to
37 collect and compile data related to workforce shortages and services provided to clients,
38 review progress by the Department of Health and Human Services regarding
39 recommendations provided to the department and the joint standing committee of the
40 Legislature having jurisdiction over health and human services matters, including the
41 recommendations of the Commission To Study Long-term Care Workforce Issues, identify
42 barriers to implementing recommendations and make recommendations on proposals to
43 address long-term care workforce shortages. The Department of Health and Human

1 Services, the Department of Labor and the Department of Education are directed to provide
2 to the oversight committee quarterly reports on the progress and efforts to implement the
3 recommendations of the oversight committee and of the Commission To Study Long-term
4 Care Workforce Issues. The oversight committee must submit an annual report to the joint
5 standing committee of the Legislature having jurisdiction over health and human services
6 matters.