

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

SECOND REGULAR SESSION-2018

Legislative Document

No. 1864

I.B. 3

House of Representatives, March 13, 2018

**An Act To Establish Universal Home Care for Seniors and Persons
with Disabilities**

Transmitted to the Clerk of the 128th Maine Legislature by the Secretary of State on
March 12, 2018 and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

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

2 **Sec. 1. 5 MRSA §12004-G, sub-§14-I** is enacted to read:

3 **14-I.**

4 Health Care Universal Home Expenses Only 22 MRSA §7284
5 Care Trust Fund
6 Board

7 **Sec. 2. 5 MRSA §12004-I, sub-§30-B** is enacted to read:

8 **30-B.**

9 Health Care Universal Home Not Authorized 22 MRSA §7285
10 Care Trust Fund
11 Advisory Committee

12 **Sec. 3. 22 MRSA sub-T. 4, Pt. 4** is enacted to read:

13 **PART 4**

14 **HOME CARE SERVICES**

15 **CHAPTER 1611**

16 **UNIVERSAL HOME CARE**

17 **§7281. Definitions**

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

20 **1. Advisory committee.** "Advisory committee" means the Universal Home Care
21 Trust Fund Advisory Committee described in section 7285.

22 **2. Board.** "Board" means the Universal Home Care Trust Fund Board described in
23 section 7284.

24 **3. Constituency.** "Constituency" means persons within one of the following
25 categories:

26 A. Personal care agencies as defined in section 1717, subsection 1, paragraph C;

27 B. Individual providers and direct care service providers employed by in-home and
28 community support services agencies; and

29 C. Persons receiving in-home and community support services through the program,
30 or their family members.

31 **4. Covered program.** "Covered program" means any program funded entirely or in
32 part by the board pursuant to this chapter.

1 **5. Eligible person.** "Eligible person" means a person determined to be eligible
2 pursuant to section 7286.

3 **6. Family caregiver.** "Family caregiver" means a person who provides care-related
4 services to assist a family member who is permanently or temporarily incapable of fully
5 caring for the family member's self. Care-related services include but are not limited to
6 coordinating care-related appointments and transportation, scheduling and coordinating
7 additional care with other workers or agencies, providing financial or emotional support
8 and supporting the physical needs of an individual necessary for day-to-day functioning
9 such as bathing, dressing, cooking, feeding, medication management, wound care,
10 transportation, shopping and domestic work.

11 **7. Family member.** "Family member" means an individual with any of the
12 following relationships to the eligible person:

13 A. Spouse or parent of the spouse;

14 B. A child or spouse of the child;

15 C. A parent or spouse of the parent;

16 D. A sibling or spouse of the sibling;

17 E. A grandparent or spouse of the grandparent;

18 F. A grandchild or spouse of the grandchild;

19 G. A domestic partner or parent of the domestic partner, including the domestic
20 partner of any individual in paragraphs A to F; or

21 H. Any other individual related to the eligible person by blood or whose close
22 association with the eligible person is the equivalent of an acknowledged family
23 relationship.

24 For purposes of this chapter, "child" includes a biological child, an adopted child, a
25 stepchild, a foster child and a child to whom the eligible person stands in loco parentis.

26 For purposes of this chapter, "parent" includes a biological parent, foster parent,
27 stepparent, adoptive parent or legal guardian of the eligible person, and an individual who
28 stood in loco parentis when the eligible person was a minor.

29 **8. Fund.** "Fund" means the Universal Home Care Trust Fund established under
30 section 7283.

31 **9. Individual provider.** "Individual provider" means any individual selected by and
32 working under the direction of an eligible person in a covered program, or an eligible
33 person's representative, to provide in-home and community support services to the
34 eligible person. "Individual provider" does not include a person providing care by virtue
35 of that person's employment or contract with a provider agency.

36 **10. In-home and community support services.** "In-home and community support
37 services" means health care and social services and other assistance required to enable
38 adults with long-term care needs to remain in their places of residence. These services
39 include, but are not limited to, self-directed care services; medical and diagnostic

1 services; professional nursing; physical, occupational and speech therapy; dietary and
2 nutrition services; home health aide services; personal care assistance services;
3 companion and attendant services; home repair, chore and homemaker services; respite
4 care; hospice care; counseling services; transportation; small rent subsidies; various
5 devices that lessen the effects of disabilities; and other appropriate and necessary social
6 services.

7 **11. Person with a disability.** "Person with a disability" means a person with a
8 physical or mental disability as defined in Title 5, section 4553-A or with a disability as
9 defined in 42 United States Code, Section 12102.

10 **12. Senior.** "Senior" means an individual 65 years of age or older.

11 **13. Universal Home Care Program.** "Universal Home Care Program" or
12 "program" means the program established under section 7282.

13 **§7282. Program established**

14 The Universal Home Care Program is established to provide in-home and community
15 support services to individuals and families determined to be eligible under this chapter at
16 no cost to those individuals and families. The board oversees all funding for services
17 provided pursuant to the program.

18 Due to the age of the population of this State and the growing utilization of in-home
19 and community support services, the need for services may exceed the board's ability to
20 provide universal access to full benefits, in which case the board shall place limits on the
21 amount of services available to each eligible person through the program.

22 **§7283. Universal Home Care Trust Fund established**

23 The Universal Home Care Trust Fund is established as a nonlapsing fund managed by
24 the board to support the program. The fund may receive any revenue appropriated or
25 allocated to the fund, including taxes collected under Title 36, sections 5002, 5204-C and
26 5204-D, and receives all funds deposited in the fund from any other source. Funds in the
27 fund may be invested in the same manner as permitted for funds held in the State
28 Treasury.

29 **§7284. Universal Home Care Trust Fund Board**

30 The Universal Home Care Trust Fund Board, established in Title 5, section 12004-G,
31 subsection 14-I, oversees and manages the fund and its use under the program in
32 accordance with this chapter. The board may provide services and incur other costs only
33 to the extent that funding is available in the fund. The board also collects and
34 disseminates information to the Legislature, the Governor and the public about the needs
35 of families in the State in order to encourage policy reform.

36 **1. Program design.** The board shall design and deliver the program to provide
37 eligible persons with in-home and community support services. The board shall design
38 the program to reduce the amount of unmet need and to supplement and not supplant
39 existing programs.

1 The board shall maximize access to in-home and community support services using the
2 funds available pursuant to this chapter. The program is not required to cover all possible
3 in-home and community support services for all eligible persons. The board is prohibited
4 from providing or offering services that would incur costs in excess of available funds.

5 If demand for services for eligible persons exceeds available funds, the board shall curtail
6 services. When curtailing services, the board may provide varying levels of service to
7 eligible persons depending on an assessment of their needs. The board may allocate an
8 amount of funding for each assessment level and restrict the total amount of services
9 provided to eligible persons in that assessment level to the funding amount allocated to
10 that level. The assessment levels must be based on the extent of interference with
11 activities of daily living, functional abilities and need for health and social services of the
12 eligible persons.

13 **2. Powers and duties. The board:**

14 A. Shall design and deliver to the extent that funds are available a home care
15 program that funds both formal care and informal family care and shall use the fund
16 to provide access to in-home and community support services for eligible persons by
17 December 31, 2021;

18 B. Shall ensure improvements in the wages, benefits and working conditions of
19 persons providing in-home and community support services;

20 C. Shall create within the program a system by which funds may be used to provide
21 a stipend to a family caregiver providing care to an eligible family member;

22 D. Shall set mandatory standards for quality and safety for in-home and community
23 support services delivered with funding from the fund, without adversely affecting
24 communities of color or low-wage earners;

25 E. Shall determine how to use the fund to fulfill the requirements of this chapter,
26 including by establishing a system for determining eligibility under section 7286, and
27 how to manage the fund to ensure its long-term sustainability, including by creating a
28 ramp-up period as described in section 7286 ending no later than December 31, 2021
29 during which services are made available to eligible persons to the greatest extent
30 possible without curtailing enrollment;

31 F. Shall set reimbursement rates for services eligible for reimbursement under the
32 program in a manner that maximizes access to those services, supports workforce
33 development and ensures service quality;

34 G. May manage the program's benefits to ensure the financial health of the fund, but
35 may not restrict eligibility for the program as set forth in section 7286;

36 H. May create advisory committees, in addition to the advisory committee under
37 section 7285, to advise the board on the program and fund;

38 I. Shall collect, analyze and disseminate information related to the program and the
39 broader needs of families in the State, as applicable, including measuring and
40 studying disparities in access to relevant services by race, income, disability and
41 gender;

- 1 J. Shall, in the event the board identifies disparities in access to relevant services by
2 race, income or gender, manage the program so that those disparities are reduced or
3 eliminated;
- 4 K. Shall create a process for assessing the needs for in-home and community support
5 services for individuals who need those services who are residing in their own homes
6 or in other private homes in the community and a process for determining the extent
7 of services eligible persons may receive;
- 8 L. May partner with the department to provide supplementary funding to existing
9 state programs, including long-term care programs other than in-home and
10 community support services, to expand eligibility, increase payments to providers or
11 raise quality standards consistent with other responsibilities, and to maintain a stable,
12 high-quality care workforce;
- 13 M. Shall create and adopt its own governance rules and develop and approve its own
14 budget for the program and its administration and may expend no more than 5% of
15 the fund on administrative costs;
- 16 N. May fund initiatives that contribute to the effective use of the fund including
17 workforce development, training and quality improvement programs and
18 certifications for direct care workers;
- 19 O. Shall conduct outreach activities to ensure public understanding of the program
20 and promote awareness of application procedures;
- 21 P. Shall report to the Legislature no later than February 15th annually on the status of
22 the fund, including revenues, expenditures on in-home and community support
23 services, administrative costs, provider reimbursement rates and any other
24 information relating to the fund, and advise the Legislature on appropriate policies
25 related to in-home and community support services;
- 26 Q. Shall, if funds available are not sufficient to cover program costs, implement cost-
27 saving measures that curtail benefits as necessary while maintaining eligibility
28 standards; and
- 29 R. Shall take any other action necessary to implement the program and enable the
30 board to exercise its powers and carry out its duties under this chapter.
- 31 **3. Membership.** The board consists of the following members:
- 32 A. Three members who represent personal care agencies as defined in section 1717,
33 subsection 1, paragraph C;
- 34 B. Three members who are individual providers or direct care service providers
35 employed by in-home and community support services agencies; and
- 36 C. Three members receiving in-home and community support services, or family
37 members or guardians of individuals receiving in-home and community support
38 services.
- 39 **4. First board.** By February 1, 2019, the Speaker of the House of Representatives
40 shall appoint 3 members to the first board who satisfy the requirements of subsection 3,
41 paragraphs A to C, respectively; the President of the Senate shall appoint 3 members to

1 the first board who satisfy the requirements of subsection 3, paragraphs A to C,
2 respectively; and the Governor shall appoint 3 members to the first board who satisfy the
3 requirements of subsection 3, paragraphs A to C, respectively. A member of the first
4 board serves for a one-year term or until the election of that member's successor under
5 subsection 5. A vacancy on the first board is filled in the same manner as the original
6 appointment by the appointing authority. The replacement member serves for the
7 unexpired portion of the term.

8 **5. Election.** The board shall establish procedures to provide for elections of board
9 members after the terms of the first board members expire. The board shall establish and
10 administer a system of nomination and secret ballot voting by mail or using a secure
11 online voting system by which each member is elected by vote of that member's
12 constituency.

13 The following persons are eligible to vote for the board members representing their
14 respective constituencies:

15 A. All personal care agencies as defined in section 1717, subsection 1, paragraph C,
16 acting through their owners, directors and managers as they may choose;

17 B. All individual providers and direct care service providers employed by in-home
18 and community support services agencies; and

19 C. All persons receiving in-home and community support services through the
20 program, or their family members.

21 No later than August 1, 2019, the department shall provide to the board lists of all persons
22 eligible to vote within the constituency categories, including names, addresses and e-mail
23 addresses. The board shall ensure that these lists are used solely for the purpose of
24 providing information relating to the board election and for mailing or e-mailing ballots.
25 The lists must be made available to the constituency associations set forth in section 7290
26 for purposes of communicating about the election, candidates and issues relating to the
27 program. Persons on the list must be given the opportunity to opt out of receiving
28 communications relating to the program.

29 The lists described in this subsection are not public records as described in Title 1, section
30 402, subsection 3. The board may adopt rules to implement this subsection, including
31 rules for the confidentiality of lists and rules detailing the elections process. Rules
32 adopted pursuant to this subsection are routine technical rules as defined in Title 5,
33 chapter 375, subchapter 2-A.

34 **6. Terms; compensation; vacancy.** A member of the board elected under
35 subsection 5 serves a 3-year term and may serve no more than 4 terms. Members receive
36 no compensation for service but are entitled to payment of any necessary expenses,
37 including travel expenses, incurred in the discharge of their duties. A vacancy during the
38 term of a member elected under subsection 5 may be filled by appointment by the
39 commissioner for the remainder of the member's term. A member representing
40 individuals receiving in-home and community support services under subsection 3,
41 paragraph C who received such services upon election but who no longer receives those
42 services may serve the remainder of the member's term. A member appointed or elected
43 under subsection 3, paragraph A or B is no longer eligible to serve if that member no

1 longer meets the requirements of the respective paragraph unless that member is moving
2 to a new position that will permit the member to meet the same requirements and the gap
3 in qualifying lasts no longer than 8 weeks.

4 **7. Administrative support; executive director.** The board shall employ an
5 executive director to take all actions appropriate and necessary to administer the program,
6 provide administrative, managerial and technical support for the operations of the board
7 and compile annual reports. The executive director must have expertise relevant to
8 managing the program. The board shall set the salary of the executive director, who
9 serves at the pleasure of the board. The executive director may hire additional
10 professional and administrative staff as necessary to administer the program.

11 **§7285. Universal Home Care Trust Fund Advisory Committee**

12 The Universal Home Care Trust Fund Advisory Committee is established under Title
13 5, section 12004-I, subsection 30-B.

14 **1. Members.** The advisory committee is composed of the following individuals or
15 their designees:

- 16 A. The commissioner;
- 17 B. The Commissioner of Labor;
- 18 C. The Commissioner of Education;
- 19 D. The Treasurer of State;
- 20 E. The President of the Senate; and
- 21 F. The Speaker of the House of Representatives.

22 **2. Duties.** The advisory committee shall, on a quarterly basis, review the policies
23 and financial management of the fund and provide guidance and advice to the board and
24 the executive director.

25 **§7286. Eligibility**

26 All seniors living in this State and all persons with a disability living in this State are
27 eligible for services under this chapter if they need assistance with at least one activity of
28 daily living as defined in section 7852, subsection 1. Eligibility takes effect no later than
29 September 1, 2019 but the board may implement a ramp-up period for services, to be
30 completed no later than December 31, 2021, as it develops the full scope of the program.
31 A person who resides in a hospital, nursing facility, intermediate care facility for persons
32 with intellectual disabilities, adult family care home or residential care facility, as defined
33 in section 7852, subsection 14, is not eligible for the program. Income may not be a
34 factor for eligibility for any services provided under the program. If demand for the
35 program exceeds the board's ability to provide meaningful benefits to eligible persons,
36 the board may create waiting lists of eligible persons and take such other measures as
37 may be needed to create an orderly process providing eligible persons with benefits as
38 soon as funding is available.

1 **§7287. Coordination**

2 The board and the department shall create a simple, unified process for enrollment in
3 coordination with the other services provided by the department intended to benefit an
4 eligible person.

5 **§7288. Outreach**

6 Beginning April 1, 2019, in accordance with rules adopted by the board, all
7 employers in the State must display in workplaces posters notifying employees of the
8 in-home and community support services available under the program. The Department
9 of Labor shall produce and distribute posters required under this section. The board shall
10 reimburse the Department of Labor for reasonable costs under this section.

11 **§7289. Direct service worker costs for in-home and community support services;**
12 **report**

13 **1. Direct service worker costs.** Providers of in-home and community support
14 services participating in a covered program shall expend a minimum of 77% of the
15 funding received from the Universal Home Care Program on direct service worker costs.
16 When determining compliance, the board shall calculate this percentage on a statewide,
17 annual basis for each provider. A provider that fails to meet this direct service worker
18 payment minimum may be suspended from the program or required to make additional
19 payments to the respective direct service workers, or both; any additional payments must
20 be for the year in which the provider failed to meet the minimum set forth in this section
21 and must be sufficient to bring the provider into compliance.

22 **2. Report.** In order to prove compliance with subsection 1, a provider shall submit
23 an annual cost report to the board based upon actual, documented expenditures for direct
24 service worker costs, administrative costs and other costs of program support.

25 A. The cost report must demonstrate that the provider has expended a minimum of
26 77% of the funding received from the program for direct service worker costs. The
27 remaining funding received from the program may be spent by the provider on
28 administrative or program support costs.

29 B. An authorized representative of the provider shall attest to the accuracy of the cost
30 report.

31 C. The board may require the provider to engage an independent certified public
32 accounting firm to verify the information and data submitted by the provider under
33 this subsection if the board is in possession of evidence to suggest the information
34 and data submitted is inaccurate, incomplete or fraudulent. The provider is
35 responsible for the cost of this audit.

36 D. For a provider who does not submit a complete, accurate and timely report under
37 this subsection, the board may impose a corrective action plan to reimburse service
38 workers, temporarily suspend the provider from covering additional persons in the
39 program or permanently terminate the provider from the program, in addition to other
40 remedies that may be available.

1 **§5001. Definitions**

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

4 **1. High earner.** "High earner" has the same meaning as in section 5204-C,
5 subsection 1, paragraph A.

6 **2. Universal home care tax income threshold.** "Universal home care tax income
7 threshold" has the same meaning as in section 5204-C, subsection 1, paragraph B.

8 **3. Wage income.** "Wage income" has the same meaning as in section 5204-C,
9 subsection 1, paragraph C.

10 **§5002. Imposition on employer**

11 In addition to other taxes, there is imposed on every employer maintaining an office
12 or transacting business in this State an excise tax at the rate of 1.9% on that amount of
13 wage income paid by that employer to any high earner employee in this State that in the
14 tax year exceeds the universal home care tax income threshold.

15 **§5003. Tax collected deposited in Universal Home Care Trust Fund**

16 One hundred percent of the tax collected pursuant to this chapter must be deposited
17 each year into the Universal Home Care Trust Fund established in Title 22, section 7283.

18 **§5004. Application**

19 This chapter applies to tax years beginning on or after January 1, 2019.

20 **Sec. 5. 36 MRSA §§5204-C and 5204-D** are enacted to read:

21 **§5204-C. Additional payroll tax on high earners' wages to support universal home**
22 **care**

23 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
24 following terms have the following meanings.

25 A. "High earner" means a taxpayer with Maine adjusted gross income exceeding the
26 universal home care tax income threshold in a tax year.

27 B. "Universal home care tax income threshold" means the federal Old-Age,
28 Survivors, and Disability Insurance contribution and benefit base set forth in 42
29 United States Code, Section 430(b), as published in the Federal Register for the
30 applicable tax year.

31 C. "Wage income" means "wages, salaries, tips, and other employee compensation"
32 as set forth in 26 United States Code, Section 32(c)(2)(A)(i).

33 **2. Tax imposed.** In addition to all other taxes contained in this Part, a tax to support
34 universal home care is imposed on the wage income of high earners for the taxable year.
35 The tax is imposed on that amount of the high earner's wage income that exceeds the

1 universal home care tax income threshold. This tax is in addition to the excise tax set
2 forth in section 5002.

3 **3. Tax rate.** The rate of the tax imposed under this section is 1.9%.

4 **4. Collection.** The Bureau of Revenue Services shall instruct employers to report
5 the tax imposed under this section on the federal form W-2 wage and tax statement in box
6 14 in the category labeled "Other" with the designation "UHC." This tax must be
7 collected by the employer of the high earner by deducting the amount of the tax from the
8 wages as and when paid.

9 **5. Tax collected deposited in Universal Home Care Trust Fund.** One hundred
10 percent of the tax collected pursuant to this section must be deposited each year into the
11 Universal Home Care Trust Fund established in Title 22, section 7283.

12 **6. Application.** This section applies to tax years beginning on or after January 1,
13 2019.

14 **§5204-D. Additional tax on high earners' nonwage income to support universal**
15 **home care**

16 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
17 following terms have the following meanings.

18 A. "High earner" has the same meaning as in section 5204-C, subsection 1,
19 paragraph A.

20 B. "Universal home care tax income threshold" has the same meaning as in section
21 5204-C, subsection 1, paragraph B.

22 C. "Universal home care wage tax credit" means the sum of the taxes paid by an
23 employee pursuant to section 5204-C, subsection 2 plus the taxes owed by the
24 taxpayer's employer pursuant to section 5002.

25 **2. Tax imposed.** In addition to all other taxes contained in this Part, a tax to support
26 universal home care is imposed on high earners. The tax is imposed on that amount of
27 the high earner's Maine adjusted gross income that exceeds the universal home care tax
28 income threshold for the tax year.

29 **3. Tax rate; adjustment.** The rate of the tax imposed under this section is 3.8%.
30 The tax owed under this section is reduced by an amount equal to the high earner's
31 universal home care wage tax credit.

32 **4. Tax collected deposited in Universal Home Care Trust Fund.** One hundred
33 percent of the tax collected pursuant to this section must be deposited each year into the
34 Universal Home Care Trust Fund established in Title 22, section 7283.

35 **5. Application.** This section applies to tax years beginning on or after January 1,
36 2019.

1 **Sec. 6. Program development and implementation.** The following provisions
2 govern the development and implementation of the Universal Home Care Program
3 established under the Maine Revised Statutes, Title 22, chapter 1611.

4 **1. Start up; appointment of first board.** No later than March 1, 2019, the first
5 Universal Home Care Trust Fund Board appointed pursuant to Title 22, section 7284,
6 subsection 2 shall meet to develop and oversee the implementation of the Universal
7 Home Care Program and to engage in planning with the Department of Health and
8 Human Services. No later than March 1, 2019, the board shall also examine the need for
9 and develop a plan for maintaining or eliminating existing advisory councils relating to
10 in-home and community support services and shall submit a report of its
11 recommendations to the joint standing committee of the Legislature having jurisdiction
12 over health and human services matters relating to the appropriate roles for those
13 councils.

14 **2. Waivers.** No later than December 31, 2019, the Department of Health and
15 Human Services shall prepare and submit to the United States Department of Health and
16 Human Services, Centers for Medicare and Medicaid Services applications to request any
17 necessary waivers to implement the Universal Home Care Program under the Maine
18 Revised Statutes, Title 22, chapter 1611.

19 **SUMMARY**

20 This initiated bill establishes the Universal Home Care Program to provide in-home
21 and community support services for all people with disabilities living in Maine who
22 require assistance with an activity of daily living and people 65 years of age or older who
23 are living in Maine and who require assistance with an activity of daily living, without
24 regard to income, to be funded by a new tax of 3.8% on income and wages that exceed
25 the maximum wages subject to social security employment taxes.