

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

SECOND REGULAR SESSION-2020

Legislative Document

No. 2109

H.P. 1504

House of Representatives, February 18, 2020

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

Reported by Representative HYMANSON of York for the Joint Standing Committee on Health and Human Services pursuant to Public Law 2019, chapter 343, Part BBBBB, section 1.

Reference to the Committee on Health and Human Services suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "R(t) B. Hunt".

ROBERT B. HUNT
Clerk

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

2 **PART A**

3 **Sec. A-1. 22 MRSA c. 1476** is enacted to read:

4 **CHAPTER 1476**

5 **DIRECT CARE WORKER WAGES**

6 **§5319. Definitions**

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

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

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

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

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

26 **5. Home or community setting.** "Home or community setting" means a place of
27 residence or group home where adults with long-term care needs receive home and
28 community-based support services.

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

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

1 **8. Self-directed care services.** "Self-directed care services" means services
2 procured and directed by the person receiving services or the person's surrogate that allow
3 the person to reenter or remain in the community and to maximize independent living
4 opportunities. "Self-directed care services" includes the hiring, firing, training and
5 supervision of direct care workers to assist with activities of daily living and instrumental
6 activities of daily living.

7 **§5320. Direct care worker minimum wage**

8 Starting January 1, 2021, the minimum hourly wage paid to a direct care worker must
9 be no less than 125% of the minimum wage established in Title 26, section 664,
10 subsection 1. Increases to the minimum wage for direct care workers must begin on
11 January 1st of each year at the same time as any increase in the minimum wage takes
12 place.

13 **§5320-A. Rulemaking**

14 The department shall adopt rules providing reimbursement rates under this chapter
15 that take into account the costs of providing the direct care worker minimum wage
16 required in section 5320. Rules adopted pursuant to this section are routine technical
17 rules as defined in Title 5, chapter 375, subchapter 2-A.

18 **Sec. A-2. Department of Health and Human Services to adopt rules to**
19 **provide reimbursement rates sufficient for structural costs.** The Department of
20 Health and Human Services shall adopt rules to increase reimbursement rates under
21 Chapter 101: MaineCare Benefits Manual and any state-funded programs to take into
22 account costs of providing care and services in conformity with applicable state and
23 federal laws, rules, regulations, training requirements and quality and safety standards,
24 including, but not limited to: costs of increases in wages for direct care workers pursuant
25 to the Maine Revised Statutes, Title 22, chapter 1476; increases in minimum wages for
26 any other workers pursuant to Title 26, section 664, subsection 1; earned paid leave
27 pursuant to Title 26, section 637; background checks required pursuant to Title 22,
28 chapter 1691; and electronic visit verification required under the federal 21st Century
29 Cures Act, Public Law 114-255, Section 12006. The department shall consult with
30 providers and other stakeholders that the department determines appropriate to determine
31 appropriate reimbursement levels for services. Rules adopted pursuant to this section are
32 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A except for rules
33 that amend Chapter 101: MaineCare Benefits Manual, Chapter III, Section 97, which are
34 major substantive rules.

35 **PART B**

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

37 **47-J.**

38 Human Services Long-term care Not Authorized 22 MRSA §5307
39 workforce oversight
40 advisory committee

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

2 **§5307. Long-term care workforce oversight advisory committee**

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

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

9 A. Eight members, appointed by the commissioner, who are employers and providers
10 of services in the long-term care industry and employ direct care workers who
11 provide assistance with activities of daily living or instrumental activities of daily
12 living to clients, patients or residents, in institutional and home or community
13 settings;

14 B. One member, appointed by the commissioner, who is a recipient of self-directed
15 care services as defined in section 5319, subsection 8; and

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

17 For the purposes of this subsection, "direct care worker" has the same meaning as in
18 section 5319, subsection 3.

19 **2. Terms; vacancy.** Members of the oversight committee are appointed to staggered
20 2-year terms so that the terms of 4 members representing providers expire on July 1st of
21 each year. If the commissioner fails to make an appointment prior to the expiration of a
22 member's term, that member continues to serve until the commissioner makes an
23 appointment for the remainder of that term. If a vacancy occurs prior to the expiration of
24 a specified term, the commissioner shall appoint a person to serve the remainder of that
25 term.

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

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

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

34 C. Review progress by the department in implementing recommendations provided
35 to the department and the joint standing committee of the Legislature having
36 jurisdiction over health and human services matters relating to long-term care
37 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
3 to increase the long-term care workforce and address shortages in services.

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

8 SUMMARY

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

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

16 2. It requires the Department of Health and Human Services to adopt rules to
17 increase reimbursement rates under Chapter 101: MaineCare Benefits Manual and any
18 state-funded programs to take into account costs of providing care and services in
19 conformity with applicable state and federal laws, rules, regulations, training
20 requirements and quality and safety standards, including, but not limited to, increases in
21 the minimum wage, earned paid leave, electronic visit verification, background checks
22 and other costs that are not provided for in the current reimbursement rates.

23 3. It establishes a long-term care workforce oversight advisory committee to collect
24 and compile data related to workforce shortages and services provided to clients, review
25 progress by the Department of Health and Human Services regarding recommendations
26 provided to the department and the joint standing committee of the Legislature having
27 jurisdiction over health and human services matters, including the recommendations of
28 the Commission To Study Long-term Care Workforce Issues, identify barriers to
29 implementing recommendations and make recommendations on proposals to address
30 long-term care workforce shortages. The oversight committee must submit an annual
31 report to the joint standing committee of the Legislature having jurisdiction over health
32 and human services matters.