

MAINE STATE LEGISLATURE

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L.D. 1573

Date: 6-10-21

(Filing No. H-563)

HEALTH AND HUMAN SERVICES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1170, L.D. 1573, "An Act To Implement the Recommendations of the Commission To Study Long-term Care Workforce Issues"

Amend the bill in the 2nd indented paragraph in the first line (page 1, line 3 in L.D.) by striking out the following: "direct care" and inserting the following: 'essential support'

Amend the bill in the 3rd indented paragraph in the first line (page 1, line 6 in L.D.) by striking out the following: "direct care" and inserting the following: 'essential support'

Amend the bill in the 4th indented paragraph in the first line (page 1, line 10 in L.D.) by striking out the following: "direct care" and inserting the following: 'essential support'

Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting the following:

PART A

Sec. A-1. 22 MRSA c. 1627 is enacted to read:

CHAPTER 1627

ESSENTIAL SUPPORT WORKER REIMBURSEMENT

§7401. Definitions

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

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

2. Direct access. "Direct access" means, with respect to an individual who is receiving services from an essential support worker in an institutional setting or in a home or

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community setting, access to the individual's property, personally identifiable information, financial information or resources or physical access to the individual.

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

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

5. In-home and community support services. "In-home and community support services" means health and social services, including behavioral health, and other assistance required to enable adults with long-term care needs to remain in their places of residence or group homes. These services include, but are not limited to, self-directed care services; home health aide services; personal care assistance services; companion and attendant services; homemaker services; respite care; daily living support services; behavioral health professional services; and other appropriate and necessary social services.

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

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

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

§7402. Essential support worker reimbursement

Starting January 1, 2022, services provided by essential support workers that are reimbursed by the department under the MaineCare program or another state-funded program must include in the reimbursement rate the following:

1. At least 125% of the minimum wage. An amount equal to at least 125% of the minimum wage established in Title 26, section 664, subsection 1 for the labor portion of the reimbursement rate. An increase to the minimum wage must be applied to the reimbursement rate at the time the increase takes place; and

2. Taxes and benefits. An amount necessary to reimburse the provider for taxes and benefits paid or costs incurred by the provider that are directly related to the reimbursed wage increase in subsection 1. This amount must be adjusted whenever an increase to the minimum wage is applied to the reimbursement rate under subsection 1.

1 **§7403. Rebasing**

2 Except as otherwise provided, the department shall rebase reimbursement rates for the
3 MaineCare program and other state-funded program reimbursement rates described in
4 section 7402 at least every 5 years. Rebasing must be based on the most recent cost report
5 filings available. The department may provide a mechanism for subsequent adjustments to
6 base year costs to reflect any material difference between as-filed cost reports used in
7 rebasing and subsequent determinations of audited, allowable costs for the same fiscal
8 period.

9 **§7404. Rulemaking**

10 The department shall adopt rules to implement the requirements of this chapter. Rules
11 adopted pursuant to this section are routine technical rules as defined in Title 5, chapter
12 375, subchapter 2-A.

13 **PART B**

14 **Sec. B-1. Reimbursement rates for home and community-based services.**

15 The Department of Health and Human Services shall amend its rules to increase MaineCare
16 reimbursement rates for home and community-based services, including daily living
17 supports, by increasing the labor portion of the reimbursement rates for essential support
18 workers as defined in the Maine Revised Statutes, Title 22, section 7401, subsection 3 to
19 125% of the minimum wage and by increasing related taxes and benefits for the following
20 sections of rule Chapter 101: MaineCare Benefits Manual, Chapter III:

- 21 1. Section 12, Allowances for Consumer Directed Attendant Services;
- 22 2. Section 17, Allowances for Community Support Services;
- 23 3. Section 18, Allowances for Home and Community-Based Services for Adults with
24 Brain Injury;
- 25 4. Section 19, Home and Community Benefits for the Elderly and Adults with
26 Disabilities;
- 27 5. Section 20, Allowances for Home and Community Based Services for Adults with
28 Other Related Conditions;
- 29 6. Section 21, Allowances for Home and Community Benefits for Members with
30 Intellectual Disabilities or Autism Spectrum Disorder;
- 31 7. Section 26, Day Health Services;
- 32 8. Section 29, Allowances for Support Services for Adults with Intellectual Disabilities
33 or Autism Spectrum Disorder;
- 34 9. Section 65, Behavioral Health Services; and
- 35 10. Section 96, Private Duty Nursing and Personal Care Services.

36 **Sec. B-2. Reimbursement rates for state-funded home and community-**
37 **based services.** The Department of Health and Human Services shall amend its rules to
38 increase reimbursement rates for state-funded home and community-based services by
39 increasing the labor portion of the reimbursement rates for essential support workers as
40 defined in the Maine Revised Statutes, Title 22, section 7401, subsection 3 to 125% of the

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1 minimum wage and by increasing related taxes and benefits for the following department
2 rules:

- 3 1. 14-197 C.M.R. Chapter 11, Consumer Directed Personal Assistance Services;
- 4 2. 10-149 C.M.R. Chapter 5, Office of Aging and Disability Services Policy Manual,
5 Section 61, Adult Day Services;
- 6 3. 10-149 C.M.R. Chapter 5, Office of Aging and Disability Services Policy Manual,
7 Section 63, In-home and Community Support Services for Elderly and Other Adults;
- 8 4. 10-149 C.M.R. Chapter 5, Office of Aging and Disability Services Policy Manual,
9 Section 68, Respite Care Services for People with Alzheimer's or Related Disorders; and
- 10 5. 10-149 C.M.R. Chapter 5, Office of Aging and Disability Services Policy Manual,
11 Section 69, Office of Elder Services Homemaker Program.

12 **Sec. B-3. Reimbursement rates for residential services.** The Department of
13 Health and Human Services shall amend its rules to increase per diem calculations to
14 include an increase to the labor portion of the reimbursement rates for essential support
15 workers as defined in the Maine Revised Statutes, Title 22, section 7401, subsection 3 to
16 125% of the minimum wage and by increasing related taxes and benefits for the following
17 residential services provided under Chapter 101: MaineCare Benefits Manual, Chapter III:

- 18 1. Section 2, Adult Family Care Services;
- 19 2. Section 50, Principles of Reimbursement for Intermediate Care Facilities for
20 Individuals with Intellectual Disabilities;
- 21 3. Section 67, Principles of Reimbursement for Nursing Facilities; and
- 22 4. Section 97, Private Non-Medical Institution Services, Appendix C.

23 **PART C**

24 **Sec. C-1. Annual reports for 5 years.** No later than February 1st of each year
25 from 2022 to 2026, the Department of Health and Human Services shall provide annual
26 reports to the joint standing committee of the Legislature having jurisdiction over health
27 and human services matters on the department's efforts and progress in implementing the
28 recommendations of the Commission To Study Long-term Care Workforce Issues
29 established by Public Law 2019, chapter 343, Part BBBB, section 1. Annual reports must
30 include data related to unstaffed hours due to staffing shortages, vacancies for essential
31 support workers and unfilled beds in residential care facilities and nursing facilities due to
32 staffing shortages. The department must include in its reports the efforts of the department
33 to include stakeholders in relevant policy discussions related to commission
34 recommendations. The joint standing committee of the Legislature having jurisdiction over
35 health and human services matters is authorized to report out legislation related to each
36 annual report received to the legislative session in which the report was received.

37 **PART D**

38 **Sec. D-1. Appropriations and allocations.** The following appropriations and
39 allocations are made.

40 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**
41 **Developmental Services Waiver - MaineCare Z211**

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COMMITTEE AMENDMENT "A" to H.P. 1170, L.D. 1573

1 Initiative: Provides funding to the Department of Health and Human Services for the new
2 requirement that the labor portion of reimbursement under MaineCare or state-funded
3 home and community-based services and residential services be at 125% of the minimum
4 wage as well as taxes and benefits directly related to the labor portion.

5	GENERAL FUND	2021-22	2022-23
6	All Other	\$1,170,249	\$3,080,961
7			
8	GENERAL FUND TOTAL	<u>\$1,170,249</u>	<u>\$3,080,961</u>

9 **Developmental Services Waiver - Supports Z212**

10 Initiative: Provides funding to the Department of Health and Human Services for the new
11 requirement that the labor portion of reimbursement under MaineCare or state-funded
12 home and community-based services and residential services be at 125% of the minimum
13 wage as well as taxes and benefits directly related to the labor portion.

14	GENERAL FUND	2021-22	2022-23
15	All Other	\$130,630	\$345,775
16			
17	GENERAL FUND TOTAL	<u>\$130,630</u>	<u>\$345,775</u>

18 **Long Term Care - Office of Aging and Disability Services 0420**

19 Initiative: Provides funding to the Department of Health and Human Services for the new
20 requirement that the labor portion of reimbursement under MaineCare or state-funded
21 home and community-based services and residential services be at 125% of the minimum
22 wage as well as taxes and benefits directly related to the labor portion.

23	GENERAL FUND	2021-22	2022-23
24	All Other	\$606,738	\$1,603,433
25			
26	GENERAL FUND TOTAL	<u>\$606,738</u>	<u>\$1,603,433</u>

27 **Medicaid Services - Developmental Services Z210**

28 Initiative: Provides funding to the Department of Health and Human Services for the new
29 requirement that the labor portion of reimbursement under MaineCare or state-funded
30 home and community-based services and residential services be at 125% of the minimum
31 wage as well as taxes and benefits directly related to the labor portion.

32	GENERAL FUND	2021-22	2022-23
33	All Other	\$42,171	\$89,038
34			
35	GENERAL FUND TOTAL	<u>\$42,171</u>	<u>\$89,038</u>

36			
37	OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
38	All Other	\$257,027	\$668,320
39			
40	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$257,027</u>	<u>\$668,320</u>

41 **Medicaid Waiver for Brain Injury Residential /Community Serv Z218**

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COMMITTEE AMENDMENT "A" to H.P. 1170, L.D. 1573

1 Initiative: Provides funding to the Department of Health and Human Services for the new
2 requirement that the labor portion of reimbursement under MaineCare or state-funded
3 home and community-based services and residential services be at 125% of the minimum
4 wage as well as taxes and benefits directly related to the labor portion.

5	GENERAL FUND	2021-22	2022-23
6	All Other	\$5,030	\$13,436
7			
8	GENERAL FUND TOTAL	<u>\$5,030</u>	<u>\$13,436</u>

9 **Medicaid Waiver for Other Related Conditions Z217**

10 Initiative: Provides funding to the Department of Health and Human Services for the new
11 requirement that the labor portion of reimbursement under MaineCare or state-funded
12 home and community-based services and residential services be at 125% of the minimum
13 wage as well as taxes and benefits directly related to the labor portion.

14	GENERAL FUND	2021-22	2022-23
15	All Other	\$32,576	\$86,289
16			
17	GENERAL FUND TOTAL	<u>\$32,576</u>	<u>\$86,289</u>

18 **Medical Care - Payments to Providers 0147**

19 Initiative: Provides funding to the Department of Health and Human Services for the new
20 requirement that the labor portion of reimbursement under MaineCare or state-funded
21 home and community-based services and residential services be at 125% of the minimum
22 wage as well as taxes and benefits directly related to the labor portion.

23	GENERAL FUND	2021-22	2022-23
24	All Other	\$2,628,063	\$6,912,875
25			
26	GENERAL FUND TOTAL	<u>\$2,628,063</u>	<u>\$6,912,875</u>

27			
28	FEDERAL EXPENDITURES FUND	2021-22	2022-23
29	All Other	\$13,205,462	\$34,125,320
30			
31	FEDERAL EXPENDITURES FUND TOTAL	<u>\$13,205,462</u>	<u>\$34,125,320</u>

32			
33	OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
34	All Other	\$918,553	\$2,374,231
35			
36	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$918,553</u>	<u>\$2,374,231</u>

37 **Nursing Facilities 0148**

38 Initiative: Provides funding to the Department of Health and Human Services for the new
39 requirement that the labor portion of reimbursement under MaineCare or state-funded
40 home and community-based services and residential services be at 125% of the minimum
41 wage as well as taxes and benefits directly related to the labor portion.

42	GENERAL FUND	2021-22	2022-23
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COMMITTEE AMENDMENT

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1	All Other	\$476,336	\$1,006,764
2			
3	GENERAL FUND TOTAL	<u>\$476,336</u>	<u>\$1,006,764</u>
4			
5	FEDERAL EXPENDITURES FUND	2021-22	2022-23
6	All Other	\$951,820	\$1,991,490
7			
8	FEDERAL EXPENDITURES FUND TOTAL	<u>\$951,820</u>	<u>\$1,991,490</u>
9			
10	OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
11	All Other	\$91,159	\$191,378
12			
13	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$91,159</u>	<u>\$191,378</u>
14	Office of Substance Abuse & Mental Health Srv-Medicaid Seed Z202		
15	Initiative: Provides funding to the Department of Health and Human Services for the new		
16	requirement that the labor portion of reimbursement under MaineCare or state-funded		
17	home and community-based services and residential services be at 125% of the minimum		
18	wage as well as taxes and benefits directly related to the labor portion.		
19	GENERAL FUND	2021-22	2022-23
20	All Other	\$2,689,067	\$6,959,919
21			
22	GENERAL FUND TOTAL	<u>\$2,689,067</u>	<u>\$6,959,919</u>
23			
24	HEALTH AND HUMAN SERVICES,		
25	DEPARTMENT OF		
26	DEPARTMENT TOTALS	2021-22	2022-23
27			
28	GENERAL FUND	\$7,780,860	\$20,098,490
29	FEDERAL EXPENDITURES FUND	\$14,157,282	\$36,116,810
30	OTHER SPECIAL REVENUE FUNDS	\$1,266,739	\$3,233,929
31			
32	DEPARTMENT TOTAL - ALL FUNDS	<u>\$23,204,881</u>	<u>\$59,449,229</u>

34 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
 35 number to read consecutively.

SUMMARY

36 This amendment replaces the bill. It makes the following changes to the bill.
 37
 38 1. It removes the requirement to pay all direct care workers 125% of the minimum
 39 wage and replaces it with the requirement for the labor portion of reimbursement under
 40 MaineCare or state-funded home and community-based services and residential services to
 41 be increased to 125% of the minimum wage as well as taxes and benefits directly related

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to the labor portion. It ties the 125% requirement to any increase in the minimum wage, which includes an annual cost-of-living increase. It requires the same cost-of-living increase to be applied to related taxes and benefits.

2. It removes the provision on rebasing for in-home and community support services and replaces it with a requirement to rebase every 5 years.

3. Instead of the term "direct care worker," the amendment uses the term "essential support worker" and includes behavioral health workers who provide daily living support.

4. It applies the 125% minimum wage requirement to essential support workers under certain rules of the MaineCare program and state-funded programs.

5. It replaces the provisions regarding the Long-term Care Workforce Oversight Advisory Committee with a provision regarding an annual report from the Department of Health and Human Services for 5 years. The report must include the efforts and progress of the department in implementing the recommendations of the Commission To Study Long-term Care Workforce Issues. The joint standing committee of the Legislature having jurisdiction over health and human services matters is authorized to report out legislation relating to the report each year.

6. It adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)

COMMITTEE AMENDMENT



130th MAINE LEGISLATURE

LD 1573

LR 440(02)

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

Fiscal Note for Bill as Amended by Committee Amendment

Committee: Health and Human Services

Fiscal Note Required: Yes

A(H-563)

Fiscal Note

	FY 2021-22	FY 2022-23	Projections FY 2023-24	Projections FY 2024-25
Net Cost (Savings)				
General Fund	\$7,780,860	\$20,098,490	\$24,477,036	\$28,855,582
Appropriations/Allocations				
General Fund	\$7,780,860	\$20,098,490	\$24,477,036	\$28,855,582
Federal Expenditures Fund	\$14,157,282	\$36,116,810	\$43,734,708	\$51,352,606
Other Special Revenue Funds	\$1,266,739	\$3,233,929	\$3,914,346	\$4,594,763
Revenue				
Federal Expenditures Fund	\$14,157,282	\$36,116,810	\$43,734,708	\$51,352,606
Other Special Revenue Funds	\$1,266,739	\$3,233,929	\$3,914,346	\$4,594,763

Fiscal Detail and Notes

The bill includes General Fund appropriations to the Department of Health and Human Services of \$7,780,860 in fiscal year 2021-22 and \$20,098,490 in fiscal year 2022-23 for the new requirement that the labor portion of reimbursement under MaineCare or state-funded home and community based services and residential services be at 125% of the minimum wage as well as related taxes and benefits directly related to the labor portion. Federal Expenditures Fund allocations are also included in this bill for the FMAP match and Other Special Revenue Funds allocations for the Service Provider Tax and Health Care Provider Tax.