

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1617

H.P. 1042

House of Representatives, April 11, 2023

Resolve, to Increase Access to Brain Injury Waiver Services

(EMERGENCY)

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

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

ROBERT B. HUNT
Clerk

Presented by Representative LIBBY of Auburn.
Cosponsored by Senator GROHOSKI of Hancock and
Representatives: HEPLER of Woolwich, LANDRY of Farmington, PERRY of Bangor, RANA
of Bangor, SARGENT of York, SKOLD of Portland, TERRY of Gorham.

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,** this legislation must take effect before the end of the 90-day period in order
4 for the Department of Health and Human Services to submit a request to the United States
5 Department of Health and Human Services, Centers for Medicare and Medicaid Services
6 to request approval to amend the brain injury waiver as soon as possible; and

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

11 **Sec. 1. Department of Health and Human Services to increase MaineCare**
12 **rates. Resolved:** That, upon approval of a waiver amendment from the United States
13 Department of Health and Human Services, Centers for Medicare and Medicaid Services,
14 the Department of Health and Human Services shall amend its rules in Chapter 101:
15 MaineCare Benefits Manual, Chapter III, Section 18, Allowances for Home and
16 Community-Based Services for Adults with Brain Injury, to increase rates for Home
17 Support (Residential Habilitation) Level I by an amount in the same proportion as the
18 difference between the Chained Consumer Price Index on the date the rate was last adjusted
19 and the Chained Consumer Price Index on the effective date of this resolve. The rules must
20 specify that the increase in reimbursement rates must be applied to wages and benefits for
21 direct support employees. For the purposes of this resolve, "direct support employees"
22 means all employees who work directly with individuals on the waiver and receiving
23 services in the home but does not include administrators and contract labor, and "Chained
24 Consumer Price Index" has the same meaning as in Maine Revised Statutes, Title 36,
25 section 5402, subsection 1. Rules adopted pursuant to this section are routine technical
26 rules pursuant to Title 5, chapter 375, subchapter 2-A.

27 **Sec. 2. Care coordination services units. Resolved:** That, by January 1, 2024,
28 the Department of Health and Human Services shall amend its rules in Chapter 101:
29 MaineCare Benefits Manual, Chapter II, Section 18, Home and Community-Based
30 Services for Adults with Brain Injury, to allow for 400 units of care coordination in each
31 year rather than limiting it to 200 units after one year. Rules adopted pursuant to this section
32 are routine technical rules pursuant to the Maine Revised Statutes, Title 5, chapter 375,
33 subchapter 2-A.

34 **Sec. 3. Department of Health and Human Services to explore telehealth**
35 **opportunities. Resolved:** That the Department of Health and Human Services shall
36 explore opportunities to provide additional reimbursable services using telehealth to
37 members currently receiving services under the brain injury waiver administered by the
38 department's office of aging and disability services, including care coordination services,
39 that could be provided by health care providers, including licensed medical personnel and
40 nonlicensed personnel.

41 **Sec. 4. Department of Health and Human Services to submit waiver**
42 **amendment. Resolved:** That the Department of Health and Human Services shall
43 submit a request to the United States Department of Health and Human Services, Centers
44 for Medicare and Medicaid Services no later than October 1, 2023 to request approval to

1 amend the brain injury waiver, rule Chapter 101: MaineCare Benefits Manual, Chapter III,
2 Section 18, Allowances for Home and Community-Based Services for Adults with Brain
3 Injury, to increase MaineCare reimbursement rates pursuant to section 1.

4 **Sec. 5. Increase to employee wages. Resolved:** That, to qualify for the rate
5 increase pursuant to section 1, an agency providing direct support employees must
6 demonstrate, to the satisfaction of the Department of Health and Human Services, that an
7 increase in wages and benefits for direct support employees has been granted that equals
8 the amount of increase received as a result of the increased reimbursement. The increase
9 must be granted or paid out retroactively from the date the department begins reimbursing
10 at the increased rates.

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

13 SUMMARY

14 This resolve directs the Department of Health and Human Services to seek approval
15 from the United States Department of Health and Human Services, Centers for Medicare
16 and Medicaid Services to amend the brain injury waiver, rule Chapter 101: MaineCare
17 Benefits Manual, Chapter III, Section 18, Allowances for Home and Community-Based
18 Services for Adults with Brain Injury, to increase Home Support (Residential Habilitation)
19 Level I rates for services provided to MaineCare members by an amount in the same
20 proportion as the difference between the Chained Consumer Price Index on the date the
21 rate was last adjusted and the Chained Consumer Price Index on the effective date of this
22 resolve. It requires the increase in reimbursement to go to direct support employees. It also
23 allows up to 400 units of care coordination each year rather than only in the first year of
24 receiving services under the waiver. The Department of Health and Human Services is
25 directed to explore opportunities to provide additional telehealth services, including care
26 coordination services, provided by both licensed medical personnel and nonlicensed
27 personnel.