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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)

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R(+ B. Hunt

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Presented by Representative FAY of Raymond.

- 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,** direct care workers provide a valuable societal service for the people of 4 Maine and often are grossly underpaid, to the disadvantage of the workers themselves and 5 the people who they serve; and
- 6 **Whereas,** provision for the relief of direct care workers was submitted through 7 legislation in the Second Regular Session of the 129th Legislature, but the sudden 8 adjournment of the session due to the COVID-19 pandemic resulted in the legislation not 9 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,

PART A

- 16 Be it enacted by the People of the State of Maine as follows:
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- Sec. A-1. 22 MRSA §1708, sub-§5 is enacted to read:
- 19 5. Reimbursement rates for in-home and community support services. The 20 department shall establish rules concerning MaineCare reimbursement rates for in-home 21 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 22 23 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 24 25 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 26 27 cost report filings available. The department may provide a mechanism for subsequent 28 adjustments to base year costs to reflect any material difference between as-filed cost 29 reports used in rebasing and subsequent determinations of audited, allowable costs for the 30 same fiscal period. The department's rules must provide that, beginning in the state fiscal vear beginning July 1, 2026, the MaineCare reimbursement rates set for each rebasing year 31 32 must include an inflation adjustment for a cost-of-living percentage change in in-home and 33 community support services reimbursement each year in accordance with the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care 34 35 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 36 37 is lower than the rate in effect on June 30, 2026.
- 38 Sec. A-2. 22 MRSA c. 1627 is enacted to read:

CHAPTER 1627

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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 services" means health and social services and other assistance required to enable adults 16 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 to reenter or remain in the community and to maximize independent living opportunities. 34 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 2 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 3 in Title 5, chapter 375, subchapter 2-A. 4

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

7 1. Minimum wage. The minimum hourly wage is \$7.50 per hour. Starting January 8 1, 2017, the minimum hourly wage is \$9.00 per hour; starting January 1, 2018, the 9 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 10 11 per hour. On January 1, 2021 and each January 1st thereafter, the minimum hourly wage 12 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 13 14 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 15 Northeast Region, or its successor index, as published by the United States Department of 16 Labor, Bureau of Labor Statistics or its successor agency, with the amount of the minimum 17 wage increase rounded to the nearest multiple of 5ϕ . If the highest federal minimum wage 18 19 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 20 21 increase in the federal minimum wage, and must be increased in accordance with this 22 section thereafter. This subsection does not apply to a direct care worker under Title 22, 23 section 7402.

24 Sec. A-4. Department of Health and Human Services to adopt rules to 25 provide reimbursement rates sufficient for structural costs. The Department of Health and Human Services shall adopt rules to increase reimbursement rates under rule 26 27 Chapter 101: MaineCare Benefits Manual and any state-funded programs to take into 28 account costs of providing care and services in conformity with applicable state and federal 29 laws, rules, regulations, training requirements and quality and safety standards, including, 30 but not limited to: costs of increases in wages for direct care workers pursuant to the Maine 31 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 32 33 wages for any other workers pursuant to Title 26, section 664, subsection 1; earned paid 34 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 35 Act, Public Law 114-255, Section 12006, Reimbursement rates under this section may not 36 37 be lower than rates in effect on the effective date of this Act. The department shall consult 38 with providers and other stakeholders that the department determines appropriate to 39 determine appropriate reimbursement levels for services. Rules adopted pursuant to this 40 section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except 41 for rules that amend Chapter 101: MaineCare Benefits Manual, Chapter III, Section 97, which are major substantive rules. 42

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PART B

- Sec. B-1. 5 MRSA §12004-I, sub-§47-J is enacted to read: 44
- 45 47-J.

1 2	<u>Human</u> Services	Long-term Care Workforce Oversight Advisory Committee	Not Authorized 22 MRSA §5307
3	Sec. B-2. 22 MRSA §5307 is enacted to read:		
4	§5307. Long-term Care Workforce Oversight Advisory Committee		
5 6 7 8 9	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.		
10	1. Membership. The oversight committee consists of 10 members as follows:		
11 12 13 14 15	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;		
16 17	B. One member, appointed by the commissioner, who is a recipient of self-directed care services as defined in section 7401, subsection 8; and		
18	C. The long-term care ombudsman as described in section 5107-A.		
19 20	For the purposes of this subsection, "direct care worker" has the same meaning as in section <u>7401</u> , subsection <u>3</u> .		
21 22 23 24 25 26	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.		
27	3. Duties. The oversight committee has the following duties:		
28 29 30 31 32	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;		
33 34	<u>B.</u> Compile data available from the Department of Labor relating to current and future needs for direct care workers;		
35 36 37 38 39 40	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		

- 1D. Make recommendations to the department and the joint standing committee of the2Legislature having jurisdiction over health and human services matters on proposals to3increase the long-term care workforce and address shortages in services.
- 4 <u>4. Meetings; report.</u> 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.

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

14 This subsection is repealed January 1, 2027.

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

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SUMMARY

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

It directs the Department of Health and Human Services to establish a 2-year
 rebasing requirement to set and increase reimbursement rates for in-home and community
 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 with applicable state and federal laws, rules, regulations, training requirements and quality 31 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, background checks and other costs that are not provided for in the current reimbursement 34 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 collect and compile data related to workforce shortages and services provided to clients, 37 review progress by the Department of Health and Human Services regarding 38 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 recommendations of the Commission To Study Long-term Care Workforce Issues, identify 41 barriers to implementing recommendations and make recommendations on proposals to 42 address long-term care workforce shortages. The Department of Health and Human 43

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