



# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

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Legislative Document

No. 1573

H.P. 1170

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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Received by the Clerk of the House on April 23, 2021. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

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

ROBERT B. HUNT  
Clerk

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

10           **Whereas,** providing relief in wages for direct care workers is now even more pressing  
11 because of the delay; and

12           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
13 the meaning of the Constitution of Maine and require the following legislation as  
14 immediately necessary for the preservation of the public peace, health and safety; now,  
15 therefore,

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

17   **PART A**

18           **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  
22 base year for those services every 2 years and increase the rate of reimbursement beginning  
23 July 1, 2022 and every year thereafter until June 30, 2026. For the state fiscal year  
24 beginning July 1, 2026, the base year for each in-home and community support services  
25 provider is its fiscal year that ended in the calendar year 2024. For state fiscal years  
26 beginning on or after July 1, 2027, subsequent rebasing must be based on the most recent  
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  
31 year beginning July 1, 2026, the MaineCare reimbursement rates set for each rebasing year  
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  
34 Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care  
35 services index. Any rebasing done pursuant to this subsection may not result in an in-home  
36 and community support services provider receiving a MaineCare reimbursement rate that  
37 is lower than the rate in effect on June 30, 2026.

38           **Sec. A-2. 22 MRSA c. 1627** is enacted to read:

39   **CHAPTER 1627**

40   **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  
16          services" means health and social services and other assistance required to enable adults  
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  
34          to reenter or remain in the community and to maximize independent living opportunities.  
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**

1 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  
3 section 7402. Rules adopted pursuant to this section are routine technical rules as defined  
4 in Title 5, chapter 375, subchapter 2-A.

5 **Sec. A-3. 26 MRSA §664, sub-§1**, as amended by IB 2015, c. 2, §1, is further  
6 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  
10 wage is \$11.00 per hour; and starting January 1, 2020, the minimum hourly wage is \$12.00  
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  
13 in the cost of living must be measured by the percentage increase, if any, as of August of  
14 the previous year over the level as of August of the year preceding that year in the  
15 Consumer Price Index for Urban Wage Earners and Clerical Workers, CPI-W, for the  
16 Northeast Region, or its successor index, as published by the United States Department of  
17 Labor, Bureau of Labor Statistics or its successor agency, with the amount of the minimum  
18 wage increase rounded to the nearest multiple of 5¢. If the highest federal minimum wage  
19 is increased in excess of the minimum wage in effect under this section, the minimum wage  
20 under this section is increased to the same amount, effective on the same date as the  
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  
26 Health and Human Services shall adopt rules to increase reimbursement rates under rule  
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  
32 support services pursuant to Title 22, section 1708, subsection 5; increases in minimum  
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,  
35 chapter 1691; and electronic visit verification required under the federal 21st Century Cures  
36 Act, Public Law 114-255, Section 12006. Reimbursement rates under this section may not  
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,  
42 which are major substantive rules.

43 **PART B**

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

45 **47-J.**

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

4 **§5307. Long-term Care Workforce Oversight Advisory Committee**

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

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

11 A. Eight members, appointed by the commissioner, who are employers and providers  
12 of services in the long-term care industry and employ direct care workers who provide  
13 assistance with activities of daily living as defined in section 7302, subsection 1-A or  
14 instrumental activities of daily living as defined in section 7302, subsection 6-A to  
15 clients, patients or residents, in institutional and home or community settings;

16 B. One member, appointed by the commissioner, who is a recipient of self-directed  
17 care services as defined in section 7401, subsection 8; and

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

19 For the purposes of this subsection, "direct care worker" has the same meaning as in section  
20 7401, subsection 3.

21 **2. Terms; vacancy.** Members of the oversight committee are appointed to staggered  
22 2-year terms so that the terms of 4 members representing providers expire on July 1st of  
23 each year. If the commissioner fails to make an appointment prior to the expiration of a  
24 member's term, that member continues to serve until the commissioner makes an  
25 appointment for the remainder of that term. If a vacancy occurs prior to the expiration of a  
26 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 A. Collect data from the department relating to the number of hours of services  
29 provided by direct care workers, the number of approved hours for which staffing  
30 cannot be provided due to staffing shortages, vacancies for direct care worker positions  
31 and the number of unfilled beds in residential care facilities licensed under chapter  
32 1664 and nursing facilities licensed under chapter 405;

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

35 C. Review the quarterly reports under subsection 5 from the department, the  
36 Department of Labor and the Department of Education on implementing  
37 recommendations provided to the departments and the joint standing committee of the  
38 Legislature having jurisdiction over health and human services matters relating to long-  
39 term care workforce issues and address barriers to implementing those  
40 recommendations; and



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