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## MEMORANDUM

To: Suzanne Gresser, Executive Director

Re: Preliminary Racial Impact Statement:

LD 270, An Act To Amend the Regional Adjustment Index To Ensure School Districts Do Not Receive Less than the State Average for Teacher Salaries

From: Dr. Amy Johnson, Maine Education Policy Research Institute (MEPRI) at USM

Date: February 18, 2022

MEPRI is pleased to participate in the pilot process for developing a Racial Impact Statement (RIS) for proposed legislation. It is both interesting and important that we have been assigned a bill that is related to Maine's school funding formula, the Essential Programs and Services (EPS) model. Resource allocation in general, and EPS in particular, is often the subject of public policy discussion. Therefore our approach in this memorandum has been to explicitly describe our process and assumptions for approaching this task as well as to address the challenge of analyzing the potential impact of this specific bill. We hope that this can thus serve as a foundation for future analyses.

There are several properties of the EPS formula that must be understood in order to assess the most likely impacts of any given funding change. Each of these issues is described here in general, and then with specific respect to LD 270.

### 1. Defining Racial Impact at the School District Level

Perhaps the most daunting challenge in the exercise of assessing racial impact in school funding is the need to operationalize race as a measure within the context of a school district (since the school district, or Local Educational Agency (LEA), is the agent that receives and administers federal, state, and local funding). As a unit of analysis, school districts can be described in terms of their students, staff, parent, and/or community demographics. And impacts can be estimated (or felt) at both the *individual* and the *group* level for each of these populations.

Maine collects demographic data on all of its public school students. It is thus feasible to describe school districts, schools, and even grade levels based on the proportion of students of color who are enrolled. It is also possible (though problematic for several reasons) to report race for an individual student. It is not possible to tie race to individual classrooms within a school (and thus tie student race to teacher race, teacher quality, other classroom parameters). It is technically possible—though not necessarily quick or easy—to attach racial subgroups to certain particular programs (such as special education, English Learner instruction, or gifted and talented education). It is **not** technically possible to attach racial categories to other types of programs such as co- or extra-curricular involvement or transportation, which are not reported to the state at the student level.

Maine does not systematically collect information on the racial identity of its public

school educators. Proposed policies that would impact school staff cannot be analyzed through the lens of race.

The racial demographics of a community are often relevant in policies related to school funding, as these include both taxpayers and the parents of students of color. Community measures of race are available through census data.

## **2. Non-targeted Funding**

The vast majority of funds allocated through the EPS formula are “non-targeted”. This means that they are not specifically earmarked for any narrow purpose, and may be budgeted as the local school district chooses. For example, the formula allocates approximately \$500 per student for the purchase of supplies and materials. However, each school district can budget more or less than that amount; if they need less than the full allocation for supplies, then any remaining funds can be budgeted for something else.

In the case of LD 270, the proposed legislation would increase the amount of funding that is allocated in the formula to pay for teacher salaries and benefits. Some types of school districts—namely, those in labor market areas with below-average salaries—would receive additional funds in the formula while those in geographic areas with average or above-average salaries would receive the same amount as before. Ostensibly, the policy intent seems to be to facilitate salary increases in areas that are currently paying below average. However, because funds allocated in the EPS formula for school staff salaries are not targeted, the increase could be directed elsewhere in the districts’ budgets. This makes it difficult (if not impossible) to predict with any certainty how any changes to the funding formula might trickle down to a given student or staff member.

## **3. Total Cost of Education, State Share Percentage, and Subsidies (General Purpose Aid)**

The EPS formula estimates the total amount of funding necessary for any given school district to be able to provide an adequate basic education for its students, based on the number of students and their characteristics. Once the funding levels are determined for each school district based on these inputs, the sum of all districts’ EPS allocations is the total cost of education. Pursuant to state statute which has been realized as of FY2022, 55% of this total cost of education is paid by the state through subsidies provided to school district (General Purpose Aid or GPA). The remaining 45% is raised by local taxpayers. However, the proportion of the EPS allocation amount is not uniformly split 45/55 in each district. Instead, the total dollar amount of the 45% local share that remains after the state covers of 55% of the total cost of education is translated to a statewide mil rate expectation. The annual mil rate expectation is calculated based on the dollar amount that needs to be raised to cover 45% of the total cost of education, divided by the total value of all property in Maine. Once translated to each town, the mil rate will raise a given amount of money based on the specific property value in that town. Once the town raises the required mil rate whatever remaining funds are needed to get to the total EPS allocation are paid through state subsidy. In a town with a lot of property wealth, the state mil rate expectation will raise more than 45% of the EPS allocation, and the state’s share will be less than 55% in that district. Conversely, relatively low property value areas will raise less than 45% when the mil rate is applied to their property, and the state share to fill the gap will be more than 55%. Thus there are below-average subsidy receivers and above-average receivers throughout the state.

This is important for evaluating impacts of school funding policy because a change that significantly raises the total cost of education **will require an increase in local taxes**. These taxes will disproportionately fall upon districts with relatively high property values per pupil. In high-valuation communities with higher proportions of people of color, the net impact of higher taxes may offset or even overpower the benefits of increased total funding for schools. This indirect impact complicates the analysis of community impacts of any proposed change in the funding formula; this aspect of funding policy plays an important role in the analysis of LD 270. The fiscal note attached to LD 270 estimates the annual cost of the policy at \$11.7 Million.

## Analysis of LD 270

Appendix B identifies how the proposed legislation would impact each school district's regional adjustment in the EPS funding formula. The list is sorted in reverse order by the proportion of students of color enrolled (attending) each unit. Data points within the table were compiled from the most recent data on student demographics, including race as well as student poverty, in Maine's publicly-available data warehouse.<sup>1,2</sup>

Overall, 13% of Maine's public school pupils are students of color. There are 183 school districts with attending students in the current year, and 29 have student bodies that are more racially diverse than the state overall (ranging from 13% to 99% students of color). All but 6 school districts enroll at least one student of color. In order to proceed with the analysis, we must operationalize how we will define race in the context of school districts. Because the proposed policy acts at the school district level, and the impact on any individual student within a given district cannot be predicted due to the variable nature of school spending priorities, we chose to focus on overall demographics rather than individual numbers. We thus compared the impact of the proposed legislation on the 29 districts with above-average diversity to the remainder of units whose students are predominately white and non-Hispanic.

There are 111 districts (61%) that are in below-average salary regions of the state and would receive more funding if their regional adjustment was changed to an index of 1.00 (the state average). Of the 29 most racially diverse districts in Maine, 16 (55%) would receive additional funding. This means that the pattern of impact is about the same in Maine's more diverse districts as in less-diverse units.

Looking further, we see that of Maine's more racially diverse districts, there is a wide range of state subsidy. At one end, Maine's Indian Education districts receive almost all of their education funding through state funds (99%). There are also units who receive well under 55% of their funding from the state, and would receive less state resources as a result of the increase in the statewide mil rate expectation that would be needed to fund this legislation. Districts including Portland (23% subsidy), South Portland (22%), Eastport (22%), and the Bar Harbor area (15% subsidy) would need to cut their budgets or increase their local tax rates as a result of this policy.

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<sup>1</sup> <https://www.maine.gov/doe/data-reporting/reporting/warehouse>

<sup>2</sup> <https://www.maine.gov/doe/funding/gpa/eps/21-22>

## Summary

We conclude that the proposed legislation LD 270, which would remove the regional adjustment for school districts in geographic areas of the state with below-average salaries, does not systematically impact school districts in a way that interacts with students' racial demographics. The policy would benefit Maine's Indian Education districts by increasing funding, the majority of which would come from state funding. It would financially harm some other districts with diverse student bodies because it would not increase their tax burden but not provide any additional funding, and other districts with higher proportions of students of color would see mixed effects. The proposed policy also would not have any predictable pattern of effect on *individual* students of color within any given district, due to the fungible nature of school funding. Thus, we find that the proposed bill has a **neutral impact on inequities** among historically disadvantaged racial populations.

**Disclaimer:** The timeframe, process and complexity of this pilot did not provide sufficient opportunity for collaboration among all of the members of the research team. Thus, the data collection and analysis provided in this preliminary statement reflects only the work of those research team members affiliated with the University of Maine System.

*This document has been presented pursuant to the plan established by the Legislative Council Subcommittee to Implement a Racial Impact Statement Process Pilot pursuant to Public Law 2021, chapter 21. The University of Maine System and The Permanent Commission on Racial, Indigenous and Maine Tribal Populations have agreed to conduct an analysis for selected bills which are subject to consideration during the Second Regular Session of the 130th Legislature. This statement is governed by an analysis framework as established by the Subcommittee. A copy of the Subcommittee's report can be found at <https://mainelegislature.org/legislative-council-subcommittee-to-implement-a-racial-impact-statement-process-pilot>.*



# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 270

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S.P. 121

In Senate, February 1, 2021

**An Act To Amend the Regional Adjustment Index To Ensure School Districts Do Not Receive Less than the State Average for Teacher Salaries**

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Received by the Secretary of the Senate on January 28, 2021. Referred to the Committee on Education and Cultural Affairs pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator STEWART of Aroostook.  
Cosponsored by Senators: POULIOT of Kennebec, WOODSOME of York, Representatives:  
SAMPSON of Alfred, STEARNS of Guilford.

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

2 **Sec. 1. 20-A MRSA §15682**, as amended by PL 2011, c. 419, §2, is further amended  
3 to read:

4 **§15682. Regional adjustment**

5 ~~The commissioner shall make a regional adjustment in the total operating allocation~~  
6 ~~for each school administrative unit determined pursuant to section 15683. The regional~~  
7 ~~adjustment must be based on the regional differences in teacher salary costs, for labor~~  
8 ~~market areas in which the school administrative unit is located, as computed by a statewide~~  
9 ~~education policy research institute, and must be applied only to appropriate teacher salary~~  
10 ~~and benefits costs as calculated under section 15678 and salary and benefit costs of other~~  
11 ~~school-level staff who are not teachers as calculated under section 15679. Beginning in~~  
12 ~~fiscal year 2012-13, and for each subsequent fiscal year, the commissioner shall make a~~  
13 ~~regional adjustment in the total operating allocation for each school administrative unit~~  
14 ~~determined pursuant to section 15683. The regional adjustment must be based on the~~  
15 ~~regional differences in teacher salary costs, for labor market areas in which the school~~  
16 ~~administrative unit is located, as computed by a statewide education policy research~~  
17 ~~institute, and must be applied only to appropriate teacher salary costs as calculated under~~  
18 ~~section 15678 and salary costs of other school-level staff who are not teachers as calculated~~  
19 ~~under section 15679. Beginning in fiscal year 2022-23 and for each subsequent fiscal year,~~  
20 ~~a school administrative unit may not receive a regional adjustment that results in a decrease~~  
21 ~~in the unit's allocation for teacher salary costs under section 15678 and salary costs of other~~  
22 ~~school-level staff who are not teachers as calculated under section 15679.~~

23 **SUMMARY**

24 This bill requires that, beginning in fiscal year 2022-23, when the Commissioner of  
25 Education makes the regional adjustment to the total operating allocation for each school  
26 administrative unit, the commissioner may not make an adjustment that decreases a school  
27 administrative unit's allocation for teacher and other school-level staff salary costs.

Appendix B: School District Racial Demographics and Direct Impact of LD 270 on Allocations

| District Name             | Enrollment    | Percent Students of Color | FRPL Elig % | FY 22 Total EPS Allocation | FY22 Adj State Share | Current Reg Adj Index | LD 270 Increased allocation? |
|---------------------------|---------------|---------------------------|-------------|----------------------------|----------------------|-----------------------|------------------------------|
| Indian Island             | 83            | 99%                       | 76%         | 1,651,035                  | 96%                  | 1.02                  | No                           |
| Pleasant Point            | 143           | 98%                       | 100%        | 2,579,379                  | 99%                  | 0.84                  | Yes                          |
| Indian Township           | 124           | 89%                       | 98%         | 2,795,123                  | 99%                  | 0.96                  | Yes                          |
| Portland Public Schools   | 6515          | 49%                       | 48%         | 91,497,586                 | 23%                  | 1.08                  | No                           |
| Lewiston Public Schools   | 5020          | 47%                       | 99%         | 79,888,132                 | 79%                  | 0.98                  | Yes                          |
| Westbrook Public Sch      | 2370          | 33%                       | 59%         | 32,171,623                 | 52%                  | 1.08                  | No                           |
| South Portland Public Sch | 2912          | 32%                       | 26%         | 40,102,194                 | 22%                  | 1.08                  | No                           |
| Eastport Public Schools   | 176           | 30%                       | 58%         | 1,358,702                  | 25%                  | 0.84                  | Yes                          |
| Biddeford Public Schools  | 2338          | 22%                       | 43%         | 31,056,373                 | 42%                  | 1.09                  | No                           |
| MSAD 76                   | 24            | 21%                       | 25%         | 700,364                    | 13%                  | 0.95                  | Yes                          |
| Bar Harbor Public Sch     | 329           | 20%                       | 14%         | 4,180,884                  | 15%                  | 0.93                  | Yes                          |
| Pembroke Public Schools   | 67            | 19%                       | 58%         | 1,030,236                  | 50%                  | 0.84                  | Yes                          |
| Auburn Public Schools     | 3400          | 19%                       | 51%         | 44,711,839                 | 67%                  | 0.98                  | Yes                          |
| Bangor Public Schools     | 3507          | 19%                       | 48%         | 41,500,109                 | 54%                  | 1.02                  | No                           |
| Kittery Public Schools    | 959           | 18%                       | 8%          | 12,900,245                 | 13%                  | 1.06                  | No                           |
| Princeton Public Schools  | 119           | 18%                       | 49%         | 1,324,470                  | 67%                  | 0.96                  | Yes                          |
| Veazie Public Schools     | 153           | 18%                       | 29%         | 2,922,083                  | 40%                  | 1.02                  | No                           |
| RSU 37/MSAD 37            | 654           | 17%                       | 54%         | 7,005,191                  | 46%                  | 0.84                  | Yes                          |
| Brunswick Public Schools  | 2362          | 17%                       | 20%         | 30,094,512                 | 43%                  | 1.02                  | No                           |
| RSU 29/MSAD 29            | 1296          | 17%                       | 72%         | 14,462,611                 | 80%                  | 0.88                  | Yes                          |
| Waterville Public Schools | 1530          | 17%                       | 51%         | 19,945,932                 | 73%                  | 0.97                  | Yes                          |
| Calais Public Schools     | 685           | 16%                       | 43%         | 5,437,991                  | 78%                  | 0.96                  | Yes                          |
| Mount Desert Public Sch   | 140           | 14%                       | 9%          | 2,125,299                  | 15%                  | 0.93                  | Yes                          |
| Yarmouth Schools          | 1674          | 14%                       | 8%          | 19,491,096                 | 35%                  | 1.08                  | No                           |
| Scarborough Public Sch    | 2865          | 14%                       | 8%          | 37,228,066                 | 14%                  | 1.08                  | No                           |
| Sebago Public Schools     | 114           | 13%                       | 38%         | 2,666,134                  | 13%                  | 0.94                  | Yes                          |
| RSU 39                    | 1143          | 13%                       | 47%         | 14,693,148                 | 81%                  | 0.90                  | Yes                          |
| Saco Public Schools       | 1824          | 13%                       | 25%         | 35,568,497                 | 50%                  | 1.09                  | No                           |
| RSU 23                    | 669           | 13%                       | 33%         | 9,726,398                  | 20%                  | 1.09                  | No                           |
| <b>State Totals</b>       | <b>169605</b> | <b>13%</b>                | <b>38%</b>  |                            | <b>55%</b>           | <b>1.00</b>           |                              |
| RSU 34                    | 1473          | 12%                       | 42%         | 16,219,087                 | 73%                  | 1.02                  | No                           |
| RSU 79/MSAD 01            | 1677          | 12%                       | 41%         | 19,488,938                 | 71%                  | 0.90                  | Yes                          |
| Sanford Public Schools    | 3036          | 12%                       | 39%         | 47,474,570                 | 77%                  | 1.03                  | No                           |
| Charlotte Public Schools  | 33            | 12%                       | 42%         | 576,435                    | 64%                  | 0.96                  | Yes                          |
| Perry Public Schools      | 82            | 12%                       | 49%         | 1,218,195                  | 43%                  | 0.84                  | Yes                          |
| Brewer Public Schools     | 1646          | 11%                       | 32%         | 18,053,839                 | 70%                  | 1.02                  | No                           |
| Cape Elizabeth Public Sch | 1503          | 11%                       | 3%          | 18,007,124                 | 14%                  | 1.08                  | No                           |
| Ellsworth Public Schools  | 1415          | 11%                       | 28%         | 15,058,714                 | 48%                  | 0.93                  | Yes                          |
| RSU 70/MSAD 70            | 478           | 11%                       | 60%         | 5,094,842                  | 67%                  | 0.88                  | Yes                          |
| Alexander Public Schools  | 38            | 11%                       | 24%         | 664,538                    | 39%                  | 0.96                  | Yes                          |
| Trenton Public Schools    | 119           | 11%                       | 32%         | 2,347,834                  | 13%                  | 0.93                  | Yes                          |

|                            |      |     |     |            |     |      |     |
|----------------------------|------|-----|-----|------------|-----|------|-----|
| Falmouth Public Schools    | 1352 | 11% | 5%  | 28,790,532 | 36% | 1.08 | No  |
| RSU 26                     | 841  | 11% | 25% | 8,661,414  | 60% | 1.02 | No  |
| Gorham Public Schools      | 3084 | 10% | 17% | 34,675,255 | 62% | 1.08 | No  |
| Augusta Public Schools     | 2160 | 10% | 49% | 26,827,504 | 57% | 0.95 | Yes |
| Harmony Public Schools     | 53   | 10% | 70% | 1,081,405  | 64% | 0.94 | Yes |
| RSU 24                     | 870  | 10% | 50% | 11,737,529 | 32% | 0.93 | Yes |
| Milford Public Schools     | 303  | 10% | 55% | 4,818,375  | 72% | 1.02 | No  |
| Hancock Public Schools     | 201  | 10% | 48% | 3,272,774  | 17% | 0.93 | Yes |
| Baileyville Public Schools | 316  | 10% | 44% | 2,958,563  | 22% | 0.96 | Yes |
| RSU 01 - LKRSU             | 1752 | 10% | 40% | 28,887,632 | 55% | 1.02 | No  |
| RSU 14                     | 3096 | 10% | 31% | 40,355,376 | 45% | 1.08 | No  |
| Mt Desert CSD              | 536  | 9%  | 9%  | 4,977,559  | 12% | 0.93 | Yes |
| Winslow Schools            | 1096 | 9%  | 37% | 12,783,155 | 65% | 0.97 | Yes |
| RSU 45/MSAD 45             | 292  | 9%  | 48% | 3,734,055  | 80% | 0.90 | Yes |
| Brooksville Public Sch     | 62   | 9%  | 31% | 1,168,414  | 8%  | 0.95 | Yes |
| Glenburn Public Schools    | 392  | 9%  | 25% | 7,425,728  | 70% | 1.02 | No  |
| Vassalboro Public Schools  | 405  | 9%  | 38% | 6,948,163  | 66% | 0.95 | Yes |
| RSU 61/MSAD 61             | 1580 | 9%  | 35% | 19,371,468 | 18% | 0.94 | Yes |
| RSU 71                     | 1453 | 9%  | 35% | 19,863,463 | 54% | 1.01 | No  |
| RSU 82/MSAD 12             | 129  | 9%  | 30% | 1,511,377  | 44% | 1.03 | No  |
| RSU 05                     | 1944 | 9%  | 23% | 23,020,952 | 28% | 1.08 | No  |
| RSU 68/MSAD 68             | 615  | 9%  | 43% | 10,276,513 | 63% | 0.95 | Yes |
| RSU 21                     | 2321 | 9%  | 18% | 33,953,010 | 22% | 1.09 | No  |
| Machiasport Public Sch     | 55   | 9%  | 80% | 1,002,569  | 20% | 0.84 | Yes |
| Lamoine Public Schools     | 116  | 8%  | 25% | 2,091,319  | 11% | 0.93 | Yes |
| RSU 60/MSAD 60             | 2906 | 8%  | 31% | 35,412,422 | 60% | 1.03 | No  |
| RSU 88/MSAD 24             | 255  | 8%  | 73% | 3,710,795  | 82% | 0.99 | Yes |
| Madawaska Public Sch       | 785  | 8%  | 20% | 5,464,448  | 57% | 0.90 | Yes |
| Southwest Hbr Public Sch   | 124  | 8%  | 24% | 1,917,328  | 16% | 0.93 | Yes |
| Islesboro Public Schools   | 94   | 8%  | 31% | 1,042,265  | 11% | 1.01 | No  |
| RSU 10                     | 1768 | 8%  | 65% | 23,154,747 | 67% | 0.93 | Yes |
| Dayton Public Schools      | 115  | 8%  | 20% | 4,148,254  | 59% | 1.09 | No  |
| RSU 51/MSAD 51             | 2083 | 8%  | 4%  | 27,342,464 | 51% | 1.08 | No  |
| RSU 15/MSAD 15             | 1788 | 8%  | 17% | 22,728,043 | 50% | 1.08 | No  |
| RSU 22                     | 2278 | 8%  | 27% | 29,725,644 | 72% | 1.02 | No  |
| RSU 25                     | 1062 | 8%  | 41% | 13,213,128 | 57% | 0.94 | Yes |
| RSU 06/MSAD 06             | 3319 | 8%  | 35% | 43,672,905 | 53% | 1.08 | No  |
| Northport Public Schools   | 115  | 8%  | 31% | 2,000,365  | 10% | 1.01 | No  |
| RSU 35/MSAD 35             | 2177 | 8%  | 17% | 24,607,653 | 49% | 1.06 | No  |
| RSU 19                     | 1841 | 8%  | 56% | 27,014,449 | 71% | 0.94 | Yes |
| York Public Schools        | 1627 | 8%  | 9%  | 21,232,579 | 13% | 1.06 | No  |
| Airline CSD                | 56   | 8%  | 38% | 768,295    | 42% | 0.93 | Yes |
| Easton Public Schools      | 227  | 7%  | 37% | 1,853,665  | 8%  | 0.90 | Yes |
| Boothbay-Bthby Hbr CSD     | 499  | 7%  | 27% | 5,350,962  | 12% | 1.03 | No  |



|                             |      |    |     |            |     |      |     |
|-----------------------------|------|----|-----|------------|-----|------|-----|
| Eustis Public Schools       | 83   | 7% | 23% | 762,206    | 6%  | 0.96 | Yes |
| RSU 18                      | 2526 | 7% | 30% | 31,164,979 | 49% | 0.95 | Yes |
| RSU 42/MSAD 42              | 382  | 7% | 41% | 3,603,883  | 67% | 0.90 | Yes |
| RSU 83/MSAD 13              | 166  | 7% | 56% | 2,029,549  | 41% | 1.03 | No  |
| Wells-Ogunquit CSD          | 1345 | 7% | 11% | 16,701,857 | 10% | 1.09 | No  |
| RSU 44/MSAD 44              | 665  | 7% | 45% | 6,775,182  | 13% | 0.93 | Yes |
| RSU 58/MSAD 58              | 561  | 7% | 48% | 5,937,693  | 59% | 0.96 | Yes |
| RSU 17/MSAD 17              | 3219 | 7% | 53% | 37,503,219 | 55% | 0.94 | Yes |
| RSU 02                      | 1888 | 7% | 28% | 23,976,488 | 60% | 0.95 | Yes |
| RSU 72/MSAD 72              | 699  | 7% | 50% | 16,726,575 | 43% | 0.94 | Yes |
| RSU 04                      | 1351 | 7% | 47% | 16,321,749 | 65% | 0.98 | Yes |
| RSU 03/MSAD 03              | 1081 | 7% | 65% | 16,246,572 | 62% | 1.01 | No  |
| RSU 53/MSAD 53              | 599  | 7% | 55% | 9,889,087  | 70% | 0.94 | Yes |
| RSU 55/MSAD 55              | 938  | 7% | 60% | 12,223,362 | 53% | 0.94 | Yes |
| Penobscot Public Schools    | 54   | 7% | 28% | 1,222,576  | 8%  | 0.95 | Yes |
| RSU 86/MSAD 20              | 458  | 7% | 55% | 5,463,712  | 79% | 0.90 | Yes |
| RSU 75/MSAD 75              | 2407 | 7% | 13% | 35,833,323 | 56% | 1.02 | No  |
| Hermon Public Schools       | 1333 | 7% | <1% | 10,871,899 | 64% | 1.02 | No  |
| RSU 63/MSAD 63              | 462  | 7% | 22% | 8,789,004  | 55% | 1.02 | No  |
| RSU 13                      | 1549 | 7% | 54% | 21,736,665 | 33% | 1.00 | No  |
| Greenbush Public Sch        | 147  | 7% | 77% | 2,683,435  | 82% | 0.89 | Yes |
| RSU 16                      | 1586 | 6% | 29% | 20,072,623 | 61% | 0.98 | Yes |
| RSU 87/MSAD 23              | 727  | 6% | 43% | 8,384,736  | 69% | 0.89 | Yes |
| RSU 31/MSAD 31              | 406  | 6% | 68% | 4,358,790  | 58% | 0.86 | Yes |
| Sedgwick Public Schools     | 77   | 6% | 52% | 1,774,034  | 17% | 0.95 | Yes |
| Orrington Public Schools    | 578  | 6% | 13% | 6,186,446  | 55% | 1.02 | No  |
| RSU 40/MSAD 40              | 1756 | 6% | 41% | 23,243,026 | 55% | 1.00 | No  |
| RSU 41/MSAD 41              | 627  | 6% | 91% | 7,528,886  | 84% | 0.95 | Yes |
| RSU 64/MSAD 64              | 1033 | 6% | 43% | 13,506,790 | 74% | 0.89 | Yes |
| MSAD 27                     | 839  | 6% | 26% | 8,467,566  | 68% | 0.99 | Yes |
| East Millinocket Public Sch | 243  | 6% | 49% | 2,113,000  | 78% | 0.88 | Yes |
| RSU 89                      | 286  | 6% | 42% | 3,352,235  | 70% | 0.88 | Yes |
| Wiscasset Public Schools    | 894  | 6% | 35% | 5,589,782  | 40% | 1.02 | No  |
| RSU 56                      | 757  | 6% | 51% | 10,004,622 | 67% | 0.93 | Yes |
| RSU 52/MSAD 52              | 1930 | 6% | 29% | 22,894,938 | 67% | 0.98 | Yes |
| RSU 54/MSAD 54              | 2259 | 6% | 73% | 31,894,462 | 63% | 1.03 | No  |
| RSU 49/MSAD 49              | 1936 | 6% | 54% | 22,648,439 | 70% | 0.97 | Yes |
| Edgecomb Public Schools     | 108  | 6% | 41% | 2,224,553  | 27% | 1.02 | No  |
| Five Town CSD               | 711  | 6% | 19% | 8,685,443  | 22% | 1.00 | No  |
| RSU 78                      | 211  | 6% | 22% | 2,605,995  | 11% | 0.96 | Yes |
| RSU 09                      | 2182 | 6% | 36% | 30,832,945 | 69% | 0.96 | Yes |
| Nobleboro Public Schools    | 123  | 6% | 27% | 2,347,287  | 8%  | 1.03 | No  |
| Millinocket Public Sch      | 459  | 5% | 59% | 4,890,433  | 76% | 0.88 | Yes |
| RSU 57/MSAD 57              | 2745 | 5% | 37% | 35,185,425 | 44% | 1.03 | No  |

|                            |      |    |      |            |     |      |     |
|----------------------------|------|----|------|------------|-----|------|-----|
| RSU 28/MSAD 28             | 724  | 5% | 17%  | 8,490,789  | 12% | 1.00 | No  |
| RSU 11/MSAD 11             | 1962 | 5% | 31%  | 22,039,331 | 69% | 0.95 | Yes |
| Brooklin Public Schools    | 60   | 5% | 28%  | 1,174,582  | 8%  | 0.95 | Yes |
| Otis Public Schools        | 87   | 5% | 49%  | 825,161    | 16% | 0.93 | Yes |
| Great Salt Bay CSD         | 378  | 5% | 22%  | 4,874,751  | 23% | 1.03 | No  |
| Winthrop Public Schools    | 893  | 5% | 34%  | 9,768,106  | 53% | 0.95 | Yes |
| Lisbon Public Schools      | 1170 | 5% | 35%  | 14,150,490 | 70% | 0.98 | Yes |
| MSAD 46                    | 857  | 5% | 59%  | 12,142,644 | 78% | 0.94 | Yes |
| RSU 12                     | 900  | 5% | 37%  | 18,648,081 | 59% | 0.95 | Yes |
| Acton Public Schools       | 214  | 5% | 30%  | 3,563,447  | 10% | 1.03 | No  |
| East Range CSD             | 24   | 5% | 46%  | 155,173    | 8%  | 0.96 | Yes |
| Blue Hill Public Schools   | 255  | 5% | 34%  | 4,495,891  | 9%  | 0.95 | Yes |
| RSU 73                     | 1373 | 4% | 44%  | 16,672,378 | 60% | 0.96 | Yes |
| Machias Public Schools     | 493  | 4% | n.a. | 3,115,191  | 67% | 0.84 | Yes |
| RSU 84/MSAD 14             | 132  | 4% | 74%  | 1,572,799  | 55% | 0.96 | Yes |
| Caswell Public Schools     | 48   | 4% | 100% | 597,089    | 78% | 0.90 | Yes |
| Georgetown Public Sch      | 46   | 4% | 22%  | 1,278,289  | 9%  | 1.02 | No  |
| Jonesboro Public Schools   | 55   | 4% | 71%  | 749,087    | 44% | 0.84 | Yes |
| Appleton Public Schools    | 129  | 4% | 27%  | 1,693,924  | 61% | 1.00 | No  |
| RSU 67                     | 918  | 4% | 52%  | 8,862,403  | 63% | 0.86 | Yes |
| RSU 50                     | 334  | 4% | 54%  | 3,954,998  | 65% | 0.88 | Yes |
| Whiting Public Schools     | 32   | 4% | 44%  | 421,180    | 5%  | 0.84 | Yes |
| RSU 30/MSAD 30             | 165  | 4% | 100% | 2,902,807  | 74% | 0.95 | Yes |
| Greenville Public Schools  | 171  | 4% | 46%  | 1,871,349  | 17% | 0.95 | Yes |
| RSU 32/MSAD 32             | 264  | 4% | 40%  | 3,895,278  | 80% | 0.90 | Yes |
| RSU 59/MSAD 59             | 542  | 4% | 65%  | 6,848,159  | 64% | 1.03 | No  |
| Limestone Public Schools   | 118  | 4% | 87%  | 2,713,224  | 82% | 0.90 | Yes |
| RSU 33/MSAD 33             | 418  | 3% | 16%  | 2,714,059  | 68% | 0.99 | Yes |
| RSU 74/MSAD 74             | 569  | 3% | 65%  | 7,892,270  | 55% | 1.03 | No  |
| RSU 20                     | 401  | 3% | 59%  | 6,554,343  | 48% | 1.01 | No  |
| St George Public Schools   | 186  | 3% | 32%  | 3,665,019  | 12% | 1.00 | No  |
| Dedham Public Schools      | 239  | 3% | 7%   | 2,530,148  | 26% | 0.94 | Yes |
| RSU 08/MSAD 08             | 166  | 3% | 46%  | 2,781,545  | 27% | 1.00 | No  |
| RSU 38                     | 1133 | 3% | 24%  | 12,418,132 | 39% | 0.95 | Yes |
| Lincolntonville Public Sch | 203  | 3% | 35%  | 2,915,256  | 19% | 1.01 | No  |
| Fayette Public Schools     | 74   | 3% | 39%  | 1,505,186  | 17% | 0.95 | Yes |
| Jefferson Public Schools   | 207  | 3% | 35%  | 4,270,270  | 40% | 0.95 | Yes |
| Medway Public Schools      | 102  | 2% | 61%  | 1,515,749  | 71% | 0.88 | Yes |
| Cherryfield Public Sch     | 82   | 2% | 34%  | 1,264,616  | 48% | 0.84 | Yes |
| Bristol Public Schools     | 200  | 2% | 24%  | 3,810,177  | 11% | 1.03 | No  |
| Deer Isle-Stonington CSD   | 327  | 2% | 61%  | 4,393,264  | 19% | 0.95 | Yes |
| RSU 80/MSAD 04             | 504  | 2% | 47%  | 5,675,481  | 50% | 0.95 | Yes |
| Tremont Public Schools     | 103  | 2% | 27%  | 1,642,289  | 15% | 0.93 | Yes |
| Woodland Public Schools    | 151  | 1% | 50%  | 1,734,665  | 75% | 0.90 | Yes |

|                          |     |    |      |           |     |      |     |
|--------------------------|-----|----|------|-----------|-----|------|-----|
| South Bristol Public Sch | 63  | 1% | 24%  | 1,091,163 | 12% | 1.03 | No  |
| Hope Public Schools      | 169 | 1% | 18%  | 2,105,839 | 51% | 1.00 | No  |
| RSU 85/MSAD 19           | 68  | 1% | 100% | 1,323,251 | 18% | 0.84 | Yes |
| East Machias Public Sch  | 160 | 1% | 48%  | 2,274,480 | 71% | 0.84 | Yes |
| Athens Public Schools    | 114 | 1% | 48%  | 1,715,941 | 63% | 1.03 | No  |
| Andover Public Schools   | 34  | 0% | 59%  | 872,061   | 33% | 0.93 | Yes |
| Castine Public Schools   | 48  | 0% | 19%  | 789,678   | 9%  | 0.95 | Yes |
| Long Island Public Sch   | 15  | 0% | 20%  | 332,402   | 11% | 1.08 | No  |
| Southport Public Schools | 30  | 0% | 13%  | 573,127   | 10% | 1.03 | No  |
| Surry Public Schools     | 138 | 0% | 36%  | 2,068,592 | 10% | 0.93 | Yes |
| West Bath Public Schools | 107 | 0% | 29%  | 2,456,921 | 11% | 1.02 | No  |

**Disclaimer:** The timeframe, process and complexity of this pilot did not provide sufficient opportunity for collaboration among all of the members of the research team. Thus, the data collection and analysis provided in this preliminary statement reflects only the work of those research team members affiliated with the University of Maine System.

## **PRELIMINARY Racial Impact Statement for LD 372, *An Act To Provide Maine Children Access to Affordable Health Care***

Drafted by Sarah Goan, Director of the Data Innovation Project at the University of Southern Maine's Cutler Institute / [sarah.goan@maine.edu](mailto:sarah.goan@maine.edu)  
February 25, 2022

### **Summary of Key Points**

- LD 372 expands Maine's Cub Care program for persons under the age of 21 by expanding the poverty eligibility threshold to 300% of federal policy level, covering non-citizen under age 21, removing barriers to enrollment, and eliminating premiums.
- Disaggregated data regarding applications and enrollment in the Cub Care program are not publicly available and could not be accessed for this pilot.
- Data from the US Census is limited when generating disaggregated counts by multiple demographic characteristics due to small numbers and undercounts.
- **Using publicly available Census, it appears that roughly 2,000 BIPOC children under the age of 21 and 420 persons under the age of 21 who are non-citizens could be newly eligible for the Cub Care program.**

### **Background**

In Maine, as of 2019, 5.7% of children under the age of 18 in Maine lacked access to health care (approximately 14,500), and this number has been growing since 2016.<sup>1</sup> Access to affordable and quality health care, has major impacts on individual health and well-being. In particular, access to health care for children affects their healthy growth and development over their lifespan. According to Maine Kids Count 2021,

“Access to quality, affordable health care is critical for child health and well-being. When children have insurance, they can get the preventive care they need to grow and develop and are more likely to have positive, long-term health outcomes. Research shows that children without health insurance are more likely to have significant trouble accessing care when they need it.”

LD 372 proposes to make changes to Maine's Cub Care program that expand access to the services contained therein. The proposed policy changes that are under examination within this research memo are as follows:

1. changes the maximum eligibility level for family income from 200% of the federal poverty level to 300% of the federal poverty level;
2. removes the 3-month waiting period for enrollment in the Cub Care program following the loss of health insurance or coverage under an employer-based plan;
3. establishes that eligibility is not subject to an asset test;
4. provides coverage to persons 19 and 20 years of age and to noncitizens under 21 years of age; and

<sup>1</sup> [https://mainechildrensalliance.org/site/assets/files/1825/2021\\_kidscount\\_db\\_final.pdf](https://mainechildrensalliance.org/site/assets/files/1825/2021_kidscount_db_final.pdf)

5. repeals the provisions regarding premium payments for the Cub Care program.

In addition, it directs the Maine Department of Health and Human Services (ME DHHS) to submit to the US Department of Health and Human Services, Centers for Medicare and Medicaid Services, waivers and/or state plan amendments to accomplish the goals of the legislation, with items 2 and 5 above being contingent upon approval. It further directs ME DHHS to use state funds to fund item 4 but stipulates that ME DHHS may apply for waivers or state plan amendments from US DHHS.

## **Methods and Limitations**

This analysis explores the potential racial impact of LS 372 using data from the US Census to estimate how many children live within the expanded eligibility range (200% - 300%), by race. We were also able to use data from the US Census to estimate the impact of expanding coverage to those who are 19 and 20 years of age, by race, as well as non-citizens under 21. The data were access using the IPUMS Abacus which we used to generate 5-year rolling estimates (2015-2019).<sup>2</sup>

There are multiple challenges with using US Census data. First, when we start looking into intersecting demographics (e.g., age and race and income) the total number of people who provided information diminishes. This can make the estimates less precise and, in some instances, unavailable due to privacy and confidentiality concerns. Thus, we could only report two racial categories: White and Black, Indigenous, and people of color (BIPOC). Second, the US Census undercounts many groups, and that this is more likely for children, persons of color, and non-citizens.<sup>3,4</sup> For example, the Urban Institute recently estimated that the 2020 US Census likely undercounted Black and Hispanic/Latinx people by a factor of 2.45% and 2.17% respectively, and that young children under the age of five were also likely undercounted by a factor of 4.86%; households with a non-citizen were likely undercounted by a factor of 3.36%.<sup>5</sup>

We must also note that US Census categories for federal poverty levels (FPL) are limited to the range of 200-300% which does not fully align with the existing eligibility guidelines (208% FPL)<sup>6</sup> although the ranges do align with the proposed legislation.

A final limitation of this impact statement is that we were unable to access detailed data from Maine DHHS about program applications and enrollment due to shortness of time available for this study. Those data could help us to determine the potential racial impacts of removing the waiting period, asset test, and premium payments.

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<sup>2</sup> <https://usa.ipums.org/usa/abacus.shtml>

<sup>3</sup> <https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/plan/undercount-of-young-children.html>

<sup>4</sup> [https://www.census.gov/library/working-papers/2021/acs/2021\\_Rothbaum\\_01.html](https://www.census.gov/library/working-papers/2021/acs/2021_Rothbaum_01.html)

<sup>5</sup> <https://www.urban.org/research/publication/simulating-2020-census-miscounts-and-fairness-outcomes>

<sup>6</sup> <https://www.nashp.org/maine-chip-fact-sheet/>

## Estimated Populations of Impact

1. *Change the maximum eligibility level for family income from 200% of the federal poverty level to 300% of the federal poverty level*
2. *Provide coverage to persons 19 and 20 years of age and to noncitizens under 21 years of age*

Nationally, data show that children of color are less likely to have access to health insurance and more likely to experience a gap in coverage. For example, the Georgetown Health Policy Institute shows that 13.9% of Hispanic children, 11.7% of Black children and 10.3% of other children of color were uninsured for all or part of a year.<sup>7</sup> That same study also showed that children under 250% of the federal policy level were more likely to be uninsured compared to those over 250% of the FPL (12.9% compared with 7.0%). Similarly, they estimated that in 2018 Medicaid and CHIP provided health insurance to more than half of children of color in America (57.1% of Black children, 56.1% of American Indian/Alaska Native children, and 54.7% of Latino children).<sup>8</sup>

In Maine, a five-year rolling estimate of US Census ACS data indicates that approximately **2,706 BIPOC persons under the age of 21 live within 200% and 300% of poverty in Maine and lack health insurance**, compared with 13,303 White persons under the age of 21 who live within that poverty range and lack health insurance (IPUMS, ACS 2015-2019). In 2019, Kids Count similarly estimated that 15,500 children lacked health insurance in Maine, approximately 2,000 of whom were BIPOC.<sup>9</sup> When examined as a percentage, these estimates suggest that **43.7% of all BIPOC children living within 200% and 300% of poverty are uninsured** (compared with a rate of 23.5% uninsured among White children who live within 200% and 300% FPL).

The proposed legislation would also expand coverage to non-citizens under the age of 21, although lawfully residing children are already eligible. National research shows that children who lack citizenship status are more likely to be uninsured (42% compared with 12%) and experience delays in needed care (7% compared with 3%).<sup>10</sup> Our 5-year ACS estimate suggests that as many as **420 noncitizens under the age of 21 in Maine** (IPUMS, ACS 2015-2019) do not have health insurance.

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<sup>7</sup> <https://ccf.georgetown.edu/2021/11/22/gaps-in-coverage-a-look-at-child-health-insurance-trends/>

<sup>8</sup> <https://ccf.georgetown.edu/2020/07/27/medicaid-and-chip-provide-health-coverage-to-more-than-half-of-children-of-color/>

<sup>9</sup> <https://datacenter.kidscount.org/data/tables/10196-children-without-health-insurance-by-race-and-ethnicity?loc=21&loc=2#detailed/2/21/false/1729,37,871/10,11,9,12,1,185,13/19728,19729>

<sup>10</sup> Jewers M, Ku L. Noncitizen Children Face Higher Health Harms Compared With Their Siblings Who Have US Citizen Status. *Health Aff (Millwood)*. 2021 Jul;40(7):1084-1089

3. *Remove the 3-month waiting period for enrollment in the Cub Care program following the loss of health insurance or coverage under an employer-based plan*
4. *Establish that eligibility is not subject to an asset test*
5. *Repeal the provisions regarding premium payments for the Cub Care program*

**The impact of these policy changes on racial disparity could not be estimated at this time due the lack of access to application and enrollment data and the time needed to generate a reliable method of estimating the impact.** A potential approach to analyzing the impacts of these policy changes would be to know the number of child applicants, by race, who apply to the Cub Care program. Even more precise estimates of impact could be determined by knowing who did not ultimately enroll, who stopped participating in the program, and the reasons why. While monthly snapshots of enrollment for Maine are available from the federal Centers for Medicare and Medicaid Studies,<sup>11</sup> aggregate application and enrollment statistics by race for CHIP/Cub Care are not publicly available through DHHS. Because the data are considered protected health information they are subject to rigorous privacy protections and would require assistance and authorization from Maine DHHS to access.

## **Conclusion and Other Considerations**

**Using publicly available data, it appears that roughly 2,000 BIPOC children who live within 200% and 300% FPL could be newly eligible for the Cub Care program.** It is more difficult to determine the extent to which LD 372 would have a notable impact on racial disparities in Maine in terms of enrollment. While the research team was able to estimate the populations potentially impacted by the policy change, we were unable to determine whether the reasons those children lack coverage are addressed by this bill. However, national research suggests the proposed policy changes will have a positive effect on access overall, as well as expand access for historically marginalized groups.

The research was hindered by the issue of “low numbers” within the US Census (meaning, too few cases exist in a sample to report results, or from which to draw strong conclusions) which limited our ability to pinpoint the impact on specific populations or groups. Furthermore, disaggregated Medicaid/Cub Care application and enrollment data by race are not readily available and require authorized access from ME DHHS. Lastly, when it comes to exploring the barriers and challenges to accessing health insurance coverage by race, it is important to consider rigorous qualitative data collection approaches (e.g., interviews, focus groups) which can focus on experiences rather than prevalence; such activities require a skilled qualitative researcher, and substantially more time and resources to complete.

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<sup>11</sup> <https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html>

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## **Preliminary Racial Impact Statement for LD 965, *An Act Concerning Nondisclosure Agreements in Employment***

Drafted by Dmitry Bam, Vice Dean/Provost University of Maine School of Law  
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February 28, 2022

*This document has been presented pursuant to the plan established by the Legislative Council Subcommittee to Implement a Racial Impact Statement Process Pilot pursuant to Public Law 2021, chapter 21. The University of Maine System and The Permanent Commission on Racial, Indigenous and Maine Tribal Populations have agreed to conduct an analysis for selected bills which are subject to consideration during the Second Regular Session of the 130th Legislature. This statement is governed by an analysis framework as established by the Subcommittee. A copy of the Subcommittee's report can be found at <https://mainelegislature.org/legislative-council-subcommittee-to-implement-a-racial-impact-statement-process-pilot>.*

### **Introduction**

You asked me to review LD 965, *An Act Concerning Nondisclosure Agreements in Employment* to determine whether the legislation may have a positive or negative racial impact. Similar legislation has been proposed, and adopted, throughout the country at the state and federal level.<sup>1</sup> This law attempts to remedy an important problem, and while it is not certain that, in Maine, the legislation would reduce inequalities for historically disadvantaged racial groups, the legislation has a good likelihood of doing so (and is, in many ways, intended to do so). Even if it does not, by increasing the opportunities for the public and state and federal regulatory agencies obtain information necessary to enforce employment discrimination laws, and by making it more difficult for employers to silence employees who have been victims of racial discrimination and harassment, LD 965 almost certainly does not exacerbate any existing inequalities or create a disparate impact on the basis of race.

### **Discussion**

#### **1. What problem is this policy/legislation addressing?**

In recent years, many employers have required employees to sign nondisclosure agreements designed to prevent the disclosure and publication of allegations of workplace misconduct by supervisors. These agreements have sometimes been used as part of a general pre-employment or employment agreement, as part of a severance package, or as part of settlement of employment-related litigation. These

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<sup>1</sup> In the United States, over a dozen states have passed such legislation. See, for example, California's Silenced No More Act.



NDAAs can limit the public's access to information about misconduct at corporate employers.

NDAAs have become especially prevalent in cases involving discrimination and harassment. In recent years, the "Me Too" movement has highlighted the prevalence of NDAAs, and how they have shielded perpetrators of sexual harassment from scrutiny.

This has allowed perpetrators of illegal workplace conduct to get away with their misconduct. In Maine, just like the rest of the United States, "enforcement of anti-discrimination laws "rests almost entirely on the shoulders of employee victims, who must first file charges with a government agency and then pursue litigation themselves." If potential victims of discrimination are unaware of the discrimination, harassment, and retaliation that may have happened at an employer, they may not be able to consider that as a factor in accepting employment, and are therefore more likely to be victims of discrimination. In addition, governmental entities charged with the enforcement of state and federal anti-discrimination laws, including the Maine Human Rights Commission and the Equal Employment Opportunity Commission, are deprived of critical information when former employees are silenced about discrimination and harassment that may be taking place in the course of employment.

The proposed legislation bans certain kinds of NDAAs, allowing them only if certain conditions are met. An NDA that "[l]imits an individual's right to report, testify or provide evidence to a federal or state agency that enforces employment or discrimination laws[, p]revents an individual from testifying or providing evidence in federal and state court proceedings in response to legal process[,] or [p]rohibits an individual from reporting conduct to a law enforcement agency" will be illegal. These provisions will make it less likely that an employer can conceal wrongful conduct in the workplace from public scrutiny or the attention of enforcement agencies.

## 2. Is the problem the legislation is addressing one that is worse or exacerbated for historically disadvantaged racial populations?

I am not aware of Maine-specific data showing that nondisclosure agreements are used more frequently in cases involving historically disadvantaged racial groups. We do know, however, that discrimination lawsuits are more likely to be brought by members of those groups,<sup>2</sup> and therefore it is likely that potential victims of nondisclosure agreements (i.e. members of the general public who remain unaware

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<sup>2</sup> There has been a significant rise in the number of discrimination claims brought by white employees and applicants for employment.

of potential employment-related problems at particular companies as well as the victims of discrimination who are unable to speak out) are more likely to be members of those groups.

3. What factors contribute to or compound racial inequities around this problem?

As discussed above, I am unaware of Maine-specific data showing that nondisclosure agreements cause greater harm on the basis of race. However, throughout the nation, despite the rise of race discrimination claims by white plaintiff, race discrimination claims are still more likely to be brought by members of historically disadvantaged racial groups. Title VII and the Maine Human Rights Act were passed in part to address problems of race discrimination in employment, and many of those problems continue to exist decades after the passage of that legislation.

4. More specifically, what policies, institutions, or actors have shaped these inequalities, disparities, and/or disparate impacts?

Reliance on employees to bring cases, combined with the prevalence of NDAs, has made it more difficult for employees to avoid employers that engage in problematic practices, and to establish discrimination claims against such employers because potentially supporting evidence is being suppressed.

Employers, fearing negative public exposure, have a strong incentive to include an NDA in a severance package or a settlement offer to avoid the negative publicity and the risk of investigation by a state and federal agency. Due to the power disparity, and money being at stake, employees have a strong incentive to accept such offers, waiving their right to speak publicly about their experience.

5. If inequities are exacerbated, what actors, at what levels of influence, could reduce these inequities?

N/A, as this legislation does not exacerbate existing inequities.

### **Conclusion**

**The proposed legislation likely reduces inequities for historically disadvantaged racial populations.** It will allow victims of race discrimination to disclose their experience to administrative agencies, making it more likely that future violations of civil rights law will be discovered (and, hopefully, avoided). Allowing victims to speak out can help them feel empowered to hold perpetrators

accountable.<sup>3</sup> Additional data would be required to determine the particular effect of this legislation in Maine. The legislation may not have a significant racial impact if NDAs in Maine are not disproportionately used in race discrimination cases or for employees from historically disadvantaged racial groups. At a minimum, however, the legislation would have a neutral impact on inequities among historically disadvantaged racial populations.<sup>4</sup>

**Disclaimer:** The timeframe, process and complexity of this pilot did not provide sufficient opportunity for collaboration among all of the members of the research team. Thus, the data collection and analysis provided in this preliminary statement reflects only the work of those research team members affiliated with the University of Maine System.

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<sup>3</sup> It is possible that severance and settlement offers to victims of race discrimination will be reduced in light of this legislation. This could happen because secrecy and confidentiality have an economic value to companies and that value could be reduced if the NDA provisions would either be struck down (when not permissible under LD 965) or subject to future litigation (even when permissible under LD 965). Further empirical work is required to evaluate this possibility and any reductions.

<sup>4</sup> Although I was not asked to address the gender-based impact of this legislation, the statute can also improve the enforcement of sexual discrimination and harassment laws. NDAs have often been used to silence victims of sexual harassment, and to protect perpetrators of sexual harassment in the workplace. Some of the legislation passed throughout the nation was in response to the Me Too and Time's Up movements.

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## **PRELIMINARY Racial Impact Statement for LD 982, *An Act to Protect Against Discrimination by Public Entities***

Drafted by Sarah Goan, Director of the Data Innovation Project at the University of Southern Maine's Cutler Institute / [sarah.goan@maine.edu](mailto:sarah.goan@maine.edu)  
February 25, 2022

### **Summary of Key Points**

- LD 982 amends Maine's Human Rights Act to apply to all public entities.
- Assessing the full impact of this statutory change was not feasible within the timeframe of this pilot.
- Prisons and jails would be newly subjected to the Human Rights Act in regard to the services being provided to individuals housed within their facilities.
- We estimate approximately 500 BIPOC individuals who are incarcerated (prison or jail) would have their rights expanded as a result.

### **Background**

This policy addresses discrimination in Maine by expanding the capacity of individuals to sue under the Maine Human Rights Act by expanding the types of entities to which the act applies.

Specifically, LD 982 proposes to amend Maine's Human Rights Act to provide that *public entities* may not "discriminate against, exclude from participation in, or otherwise deny the benefits of the services, programs or activities of a public entity to any individual by reason of race, color, sex, sexual orientation, gender identity, age, physical or mental disability, religion, ancestry or national origin."

**The definition of public entity is:** A) any State or local government; (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government. Thus, public entities include county libraries, state parks, Department of Motor Vehicle offices, courthouses, benefits programs, and any other facilities or services that are operated or provided by a state or local government.<sup>1</sup>

### **Methods and Limitations**

Assessing the full impact of this statutory change would require identifying the types of public entities in the State of Maine to which the proposed change applies, and then conducting a thorough reading of the entire Act to determine whether they were already covered or exempt. Such detailed analysis was not feasible within the timeframe of this pilot.

Similarly, projecting forward how many cases would in fact emerge from this proposed expansion, and for which demographic populations of interest, is not feasible at this time. One potential method could be to use current data tracked by the Maine Human Rights Commission to generate an estimation model (e.g., historical case rates by sector and population) that could

<sup>1</sup> <https://legalaidatwork.org/factsheet/disability-discrimination-by-public-entities/>

then be applied to the service populations for newly covered entities; this assumes, of course, that the HRC tracks these sorts of statistics in a way that is assessable for the conduct of research.

However, the Maine State Prison and local county jails are not currently subject to the Maine Human Rights Act in terms of the services being provided to individuals housed within their facilities. **Thus, we examined the racial breakdown of the prison population and, to a lesser degree the jail population, to estimate the number of individuals for whom the proposed law change would impact in terms of expanding their rights to sue for discrimination.**

The Maine Department of Corrections has a centralized data tracking capacity and routinely publishes statistics that can be accessed publicly; additional analysis can be conducted with appropriate time and permissions. The estimates below rely on Maine Department of Corrections (MDOC) monthly estimates of adult (age 18+) residents by race and gender for 2020 and use an annual average to extrapolate the impact (using the average helps us to account for the fact that the enrollment fluctuates throughout the year, with some individuals leaving, others entering, and some remaining throughout).<sup>2</sup> With more time and resources, a research team could generate a precise unduplicated annual headcount of the Maine Prison population by requesting data from the Maine DOC, assuming the proper permissions and data use agreements could be secured for this purpose.

Conversely, Maine's 15 jails<sup>3</sup> are decentralized and use a variety of different record management systems although two, IMC and Spillman, are used in most. To conduct a statewide analysis, each jail must provide their data to researchers who then combine, clean and align the data. The challenges posed by decentralized jail data are further exacerbated by issues of cross-comparability, local data quality, and the local capacity of jails to comply with ad hoc data requests. Indeed, national and local research efforts often report that data related to the overall jail population in Maine is unavailable (e.g., <https://nicic.gov/state-statistics/2017/maine-2017>).

For this report, jail data are accessed from a 2019 study conducted by the Vera Institute of Justice, a nationally acclaimed research institute, which used data from 2015 to provide jail population statistics.<sup>4</sup> Without more centralized practices, the timeliness and accuracy of jail data is severely limited; the Maine Sheriff's Association could be helpful for accessing data from the jails in the future.

### **Estimated Impact on Individuals who are Incarcerated**

**At any given time in 2021, ME DOC served approximately 261 incarcerated individuals (age 18+) who identified as BIPOC** (based on 2021 monthly averages). The proposed legislation would affect them in terms of their capacity to sue for discrimination because of their race under the Maine Human Rights Act, although this does not mean they will act on this right if it were made available to them. Nor does this analysis account for the fact that the ***total***

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<sup>2</sup> <https://www.maine.gov/corrections/about/best-practices/reports-statistical-data>

<sup>3</sup> Two counties – Lincoln and Sagadahoc – operate the Two Bridges Regional Jail.

<sup>4</sup> <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-maine.pdf>

number of people affected over the course of one year would be higher as individuals enter/exit the system.

We should note that the proposed changes will also expand the rights of all individuals (age 18+) who are incarcerated (on average, **1,624** individuals at any given time in 2021) in terms of their capacity to sue for discrimination under the Maine Human Rights Act for factors other than race including sexual orientation, gender identity and religious beliefs.

The estimates above do not account for those individuals committed to or detained in one of Maine's 15 county jails. The most recent estimates of the jail population from the 2019 Vera Institute study showed a **total jail population of 1,797 individuals in 2015, 13% of whom were identified as non-White (233).**

### **Conclusion and Other Considerations**

Overall, our conclusion is that expanding the range of agencies and organizations who are required to adhere to the Maine Human Rights Act thereby expands the ability of individuals to sue for discrimination, which in turn impacts a wide range of individuals, including BIPOC Mainers. It cannot be determined at this time how many cases would emerge as a result of expanding the Maine Human Rights Act to include public entities, nor the types of discrimination for which those cases would be brought.

Assessing the full impact of this statutory change was not feasible within the timeframe of this pilot. Identifying all the types of public entities that would be affected and projecting how many cases would emerge would require more time and resources than were available, as well as access to data that may or may not be available from the Maine Human Rights Commission. Moreover, the source of data for jails (a newly covered entity) is decentralized and requires significant effort to access, aggregate, and analyze at the state level.

**However, we estimate that approximately 500 BIPOC individuals who are incarcerated (prison or jail) would have their rights expanded as a result.**

**Disclaimer:** The timeframe, process and complexity of this pilot did not provide sufficient opportunity for collaboration among all of the members of the research team. Thus, the data collection and analysis provided in this preliminary statement reflects only the work of those research team members affiliated with the University of Maine System.

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## Preliminary Racial Impact Statement on LD 1574, “An Act To Ensure Support for Adults with Intellectual Disabilities or Autism with High Behavioral Need”

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This document has been presented pursuant to the plan established by the Legislative Council Subcommittee to Implement a Racial Impact Statement Process Pilot pursuant to [Public Law 2021, chapter 21](#). The University of Maine System and The Permanent Commission on Racial, Indigenous and Maine Tribal Populations have agreed to conduct an analysis for selected bills which are subject to consideration during the Second Regular Session of the 130th Legislature. This statement is governed by an analysis framework as established by the Subcommittee. A copy of the Subcommittee’s report can be found at

<https://mainelegislature.org/legislative-council-subcommittee-to-implement-a-racial-impact-statement-process-pilot>

### Acknowledgments

Supported in part by grant 90DDUC0056 from Administration for Community Living (ACL), US Department of Health and Human Services (HHS). Contents are those of the author and do not necessarily represent the official views of, nor an endorsement by, ACL/HHS or the US Government. Thanks to Jennifer Maeverde, Marnie Morneault, Jamie Koenig, and Katie Johnson for sharing helpful sources and to Staci Converse and Paul Saucier for sharing information about Maine’s Section 21 and 29 Home and Community Based Services waivers.

## 1 Executive Summary

[LD 1574 introduced in the 130<sup>th</sup> Maine Legislature](#) seeks to enhance reimbursement rates to community service providers in order to improve supports for those adults with intellectual disabilities or autism whose Section 21 or 29 Home and Community Based Services include positive behavioral support plans or behavior management plans. There are myriad racial and ethnic disparities among people with intellectual disabilities and autism, including in access to services, but basic racial and ethnic information is lacking in Maine (such as racial makeup of people supported by Section 21 or 29, on the wait lists for such support, deemed to exhibit challenging behavior, or on positive behavioral support plans or behavior management plans)—though the Office of Aging and Disability Services does plan data exchanges in order to collect such information, consistent with the Diversity, Equity, and Inclusion initiative of the Department of Health and Human Services. The disparities, the incomplete basic demographic information, and the challenges that people with disabilities face in receiving adequate support are all consistent with longstanding structural racism and ableism. **Regardless of whether the Legislature passes LD 1574, the Department of Health and Human Services could (1) resume participation in the National Core Indicators survey, (2) participate in the future in data collection using person-centered measures currently being field tested by the Rehabilitation Research and Training Center on HCBS Outcome Measurement, and (3) analyze data more immediately available in Maine on patterns related to race, ethnicity, and linguistically and culturally diverse groups in a list of measures related directly and indirectly to the needs that this bill seeks to address.**

## 2 Data Informing the Analysis

Administrative data from Maine were limited, though there were more extensive data available from the National Core Indicators study<sup>1</sup>, which is an annual national survey of people with developmental disabilities receiving services from state agencies. Analysis of the general issues of equity were also supported to a large extent by drawing on the broader scientific literature.

## 3 Questions To Be Answered According to Framework of Legislative Council Subcommittee

### 3.1 What Problem is this Policy/Legislation Addressing?

The bill seeks to ensure that reimbursement rates to community service providers for people with intellectual disabilities or autism who are on positive behavioral support plans and behavior management plans are adequate to cover costs of clinical oversight; equipment; and staff with additional training, qualifications, and experience.

#### 3.1.1 Selected Issues Raised by Proponents

One proponent of the bill asserted that lack of support left some people with intellectual and developmental disabilities (IDD) homeless, in emergency departments, prisons, or placed in out-of-state institutions.

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<sup>1</sup> <https://www.nationalcoreindicators.org/>



Other proponents<sup>2</sup> raised the concern about current rates not being adequate to support access to programming and/or community inclusion of people with significant challenging behavior.

Other proponents attributed high turnover for staff supporting people with challenging behavior to inadequate reimbursement.

Several proponents raised the issue of inadequate reimbursement leading to inadequate wages and connected that to lack of appropriate services.

One proponent also raised the issue of including people with dual diagnosis (mental health + IDD) in legislation.

One proponent expressed the view that current rate structures would support higher ratios of staff to people receiving support but do not adequately reimburse behavior analysts to improve program quality.

### 3.1.2 Selected Issues Raised by Opponent

An opponent of the bill warned that an enhanced reimbursement rate could stigmatize people with disabilities for having behaviors that would be acceptable for people without disabilities. This opponent also cautioned against creating incentives to place people in behavior management plans that can last years and restrict the civil rights of people with disabilities.

### 3.1.3 Relationship with Value-Based Purchasing and Contemplated Lifelong Waiver

The bill's sponsor noted that a 2020 study<sup>3</sup> by the Office of Aging and Disability Services and Office of MaineCare Services undertaken pursuant to [PL 2019 chapter 290](#) found that the current rate structure does not include an incentive for agencies to invest in specialized staff and other resources to successfully manage challenging behavior and suggests a transition to value-based purchasing. Another proponent suggested that the bill would dovetail with the Developmental Services Lifelong Continuum of Care model endorsed by the LD 1816 Developmental Services Workgroup<sup>4</sup>. Testimony by the Office of Aging and Developmental Services also endorsed a value-based payment approach, though as an alternative to LD 1574 (when combined with 2020 and 2021 rate increases and systemic assessments the Department is undertaking).

## 3.2 Is the Problem the Legislation is Addressing One that is Worse or Exacerbated for Historically Disadvantaged Racial Populations?

A recent literature review indicates complex, and sometimes conflicting, associations in adults with intellectual disabilities between behavioral, psychiatric, and psychosocial predictors, on the one hand,

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<sup>2</sup> Disclosure: One of these proponents who testified in favor of the bill is also the author of this Preliminary Racial Impact Statement. He nevertheless endeavored to approach development of this impact statement objectively but invites readers to judge for themselves the extent to which this goal was achieved.

<sup>3</sup> Maine Department of Health and Human Services (2020, September). *Office of Aging and Disability Services & Office of MaineCare Services study of services for persons with intellectual disabilities or autism and adequacy of MaineCare reimbursement, in relation to challenging behavior pursuant to Public Law 2019 chapter 290*. Retrieved February 16, 2022, from <https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/Supports%20for%20Adults%20with%20Intellectual%20Disabilities%20or%20Autism%20in%20Crisis%20%28LD%201486%29%20Report%20%209-2020.pdf>

<sup>4</sup> Maine Coalition for Housing and Quality Services (n.d.). *DD continuum of care*. Retrieved February 17, 2022, from <https://www.maineparentcoalition.org/dd-continuum-of-care.html>

and aggressive behavior on the other hand<sup>5</sup>. There are currently approximately 80 Mainers on behavior management plans, but an unknown number on positive behavior support plans because positive support plans do not require Departmental approval<sup>6</sup>.

As of September 30, 2021, there were 3,272 people receiving Section 21 HCBS waiver services (plus 1,968 people on the Section 21 wait list, 487 of whom had no other coverage) and 2,552 people receiving Section 29 HCBS waiver services (plus 265 on the Section 29 wait list, 151 of whom had no other coverage)<sup>7</sup>. The Office of Aging and Developmental Services does not currently have data on the race or ethnicity of most people supported by Maine’s Home and Community Based Services (HCBS) waivers, but they have undertaken a project to obtain such data from other sources<sup>8</sup>, and the Department of Health and Human Services has a strategic plan to advance diversity, equity, and inclusion<sup>9</sup>.

### 3.2.1 Disparities Most Directly Related to Behavior Plans

According to the National Core Indicators survey, respondents in Maine are less likely than respondents in other states to be on behavior plans (9% vs 26% in 2017-18)<sup>10</sup>.

Nationally, Black respondents are less likely than White respondents to be on behavior plans (21% vs 24% in 2018-19)<sup>11</sup>. Nationally, Black respondents are also less likely than White respondents to need support for self-injurious behavior (17% vs 22%), disruptive behavior (33% vs 39%), or destructive behavior (22% vs 26%)<sup>11</sup>.

Nationally, Black respondents are more likely than White respondents to be diagnosed with a psychotic disorder (19% vs 10% in 2018-19)<sup>11</sup>. Given that Black respondents are less likely to be on behavior plans, the question has been raised of whether White respondents with similar characteristics might be more likely to be described as having “behavioral issues” compared to a mental illness.<sup>11</sup>

Nationally, Black respondents are less likely than White respondents to have a paid community job (16% vs 21%)<sup>11</sup>, which may reflect the persistent high employment among Black people in the general

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<sup>5</sup> van den Akker, N. Kroezen, M., Wieland, J., Pasma, A., & Wolkorte, R. (2020). Behavioural, psychiatric, and psychosocial factors associated with aggressive behaviour in adults with intellectual disabilities: A systematic review and narrative analysis. *Journal of Applied Research in Intellectual Disabilities*, 34, 327-389. <https://doi.org/10.1111/jar.12809>

<sup>6</sup> Staci Converse (Managing Attorney, Disability Rights Maine), personal communication, February 16, 2022.

<sup>7</sup> Office of Aging and Disability Services (2021, October 28). *Quarterly update: Enrollment in waiver programs for adults with intellectual and developmental disabilities and brain injury surpasses 6,000*. Retrieved February 16, 2022, from <https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/Waitlist-9.30.21.docx>

<sup>8</sup> Paul Saucier (Director of Office of Aging and Disability Services), personal communication, February 8, 2022.

<sup>9</sup> Lambrew, J. M. (n.d.) *A strategic plan to advance diversity, equity, and inclusion (DEI) at the Maine Department of Health and Human Services (DHHS): 2021-2023*. Retrieved February 15, 2022, from <https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/Strategic%20Plan.pdf>

<sup>10</sup> National Core Indicators. Chart Generator 2017-18. National Association of State Directors of Developmental Disabilities Services and Human Services Research Institute. Retrieved February 25, 2022, from <http://www.nationalcoreindicators.org/charts>

<sup>11</sup> Bradley, V. J., Hiersteiner, D., Goode, T. D., Bonardi, A., Giordano, S., Bourne, M. L., & Vegas, L. (2021). *What do NCI data tell us about significant racial & ethnic disparities across quality of life & health domains?* National Association of State Directors of Developmental Disabilities Services and Human Services Research Institute. Retrieved February 25, 2022, from [https://www.nationalcoreindicators.org/upload/core-indicators/NCI\\_DB\\_RacialEquity\\_final\\_3\\_4.pdf](https://www.nationalcoreindicators.org/upload/core-indicators/NCI_DB_RacialEquity_final_3_4.pdf)

population<sup>12</sup>. Respondents in Maine are more likely than the national sample to report having a paid community job (33% vs 18%)<sup>10</sup>.

Nationally, Black respondents are more likely to express a desire for greater community involvement (38% vs 29% for shopping, 50% vs 42% for entertainment, 48% vs 39% for eating out, 29% vs 20% for attending religious service/spiritual practice), which has been interpreted to suggest barriers to community access that could include economic or social barriers to community participation<sup>11</sup>.

### 3.2.2 Other Disability Disparities

There is evidence beyond Maine on disparities among people with IDD in rate of disability, access to services in adulthood, and in disproportional use of physical restraint among children from racial and ethnic minority groups.

Disability and race both have substantial impact on people's lives, and they interact in complex ways. As summarized in a recent review and analysis<sup>13</sup>, African American people are more likely than Non-Hispanic White people to have a disability regardless of age, and while Latinos actually have lower rates of disability, people of color already have poorer outcomes than White people in education, income, and employment. Furthermore, employment and educational opportunities for Latino and Black young adults with autism are lower than for White young adults with autism<sup>14</sup>, and among people with disabilities receiving services from a state-run federally funded vocational rehabilitation program, Black women have lower odds of employment than White women<sup>15</sup>.

### 3.2.3 Racial Disparities in Adult Developmental Services

From 2005 to 2013 in California, as the number of people assessed for IDD services increased, so did the percentage of people with IDD not receiving any services. During this time, racial and ethnic disparities persisted, with Asian American/Pacific Islanders, African Americans, Hispanics, and people of other racial/ethnic category all having lower odds of receiving services than White people with the same level of need and also having lower expenditures than White people with the same level of need<sup>16</sup>. To address persistent disparities, California now requires data collection and reporting on authorization, utilization, and expenditure of "purchase of service" dollars (funds beyond what is funded by generic sources such as Medicare) by its developmental services agency with a focus on race, ethnicity, and primary language cross-classified by other variables, and to convene a public meeting within 90 days of posting to discuss

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<sup>12</sup> Ajilore, A. (2020). The persistent black-White unemployment gap is built into the labor market. Center for American Progress. Retrieved February 25, 2022, from <https://www.americanprogress.org/article/persistent-black-white-unemployment-gap-built-labor-market/>

<sup>13</sup> Goodman, N., Morris, M., Boston, K. (2019). *Financial inequality: Disability, race, and poverty in America*. National Disability Institute. Retrieved February 16, 2022, from <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/02/disability-race-poverty-in-america.pdf>

<sup>14</sup> Shattuck, P. T., Narendorf, S. C., Cooper, B., Sterzing, P. R., Wagner, M., & Taylor, J. L. (2012). Postsecondary education and employment among youth with an autism spectrum disorder. *Pediatrics*, 129, 1042-1040. <https://doi.org/10.1542/peds.2011-2864>

<sup>15</sup> Oberoi, A. K., Balcazar, F., Suzrez-Balcazar, Y., Langi, F. L. F. G., & Lukyanova, V. (2015). Employment outcomes among African American and White women with disabilities: Examining inequalities. *Women, Gender, and Families of Color*, 3(2), 144-164. <https://doi.org/10.5406/womgenfamcol.3.2.0144>

<sup>16</sup> Harrington, C., & Kang, T. (2016). Disparities in service use and expenditures for people with intellectual and developmental disabilities in California in 2005 and 2013. *Intellectual and Developmental Disabilities*, 54(1), 1-18. <https://doi.org/10.1352/1934-9556-54.1.1>

the data<sup>17</sup>. Analysis of these data has revealed that school-age per capita purchase-of-service expenditures have been reported to be disproportionately high for White children and Asian children and disproportionately low for Native American children, and adult-age per capita purchase-of-service expenditures have been reported to be very high for Black adults and White adults, disproportionately high for Native American adults, and disproportionately low for Asian adults.<sup>18</sup>

**3.2.4 Racial and Ethnic Disparities in Health Care and Medical Conditions for Adults with IDD** Nationally, Black, Hispanic, and Asian Medicaid autistic adult beneficiaries have higher odds of diabetes and hypertension than White autistic beneficiaries, Black and Hispanic beneficiaries have higher odds of hospitalized cardiovascular disease, and Asian and Hispanic beneficiaries have higher odds of schizophrenic disorder.<sup>19</sup>

In a national sample<sup>20</sup>, disparities have also been reported in access to routine health care by racial/ethnic groups in adults with IDD, with Hispanic people with IDD being less likely than non-Hispanic White people with IDD to have cancer screenings (mammograms, pap tests, PSA tests), routine exams, dental visits and flu shots, and with Black people with IDD being more likely than White people with IDD to have cancer screenings but less likely than White people with IDD to have routine exam, dental visits, or flu shots.

**3.2.5 Racial Disparities in Restraint of Children in School and Psychiatric Settings**

In a study of 798 youth in residential mental health treatment centers in the Midwest, Black youth on average were reported to experience about 1.33 times more restraints than White youth<sup>21</sup>. Racial disparities also exist in public schools: nationwide, the percentage of Black students experiencing restraint in 2013-14 was 1.48 times higher than for White students, and the percentage of American Indian/Alaska Native students experiencing restraint was 1.18 times higher than for White students<sup>22</sup>. Black students with a disability attending affluent and low-minority schools are restrained at highly disproportional rates<sup>23</sup>.

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<sup>17</sup> California Welfare and Institutions Code WIC §4519.5. Retrieved February 15, 2022, from [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=WIC&sectionNum=4519.5](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC&sectionNum=4519.5)

<sup>18</sup> Topete, R. (2018). *Engaging underserved communities to address chronic inequities in accessing DD services in California related to race, ethnicity, and language*. Poster presented at annual meeting of the Association of University Centers on Disability, Washington, DC. Retrieved February 15, 2022, from [https://www.aucd.org/meetings/288/24833/Topete\\_USC\\_UCEDD\\_Addressing\\_Chronic\\_Inequities\\_10\\_26\\_2018.pdf](https://www.aucd.org/meetings/288/24833/Topete_USC_UCEDD_Addressing_Chronic_Inequities_10_26_2018.pdf)

<sup>19</sup> Schott, W., Tao, S., & Shea, L. (2022). Co-occurring conditions and racial-ethnic disparities: Medicaid enrolled adults on the autism spectrum. *Autism Research, 15*, 70-85. <https://doi.org/10.1002/aur.2644>

<sup>20</sup> Scott, H. M., & Haverkamp, S. M. (2014). Race and health disparities in adults with intellectual and developmental disabilities living in the United States. *Intellectual and Developmental Disabilities, 52*(6), 409-418. <https://doi.org/10.1352/1934-9556-52.6.409>

<sup>21</sup> Braun, M. T., Adams, N. B., O'Grady, C. E., Miller, D., & Bystrynski, J. (2020). An exploration of youth physically restrained in mental health residential treatment centers. *Children and Youth Services Review, 110*, 104826. <https://doi.org/10.1016/j.childyouth.2020.104826>

<sup>22</sup> Government Accountability Office (2018, March 22). *K-12 education: Discipline disparities for Black students, boys, and students with disabilities*. GAO-18-258. Retrieved February 16, 2022, from <https://www.gao.gov/products/gao-18-258>

<sup>23</sup> Gagnon, D. J., Mattingly, M. J., & Connelly, V. J. (2017). The restraint and seclusion of students with a disability: Examining trends in U.S. school districts and their policy implications. *Journal of Disability Policy Studies, 28*(2), 66-76. <https://doi.org/10.1177/1044207317710697>

### 3.3 What Factors Contribute to or Compound Racial Inequities Around this Problem?

The relationships among culture, race, and ethnicity and intellectual and developmental disabilities are complex, and some of those relationships vary by jurisdiction<sup>24</sup>.

The population of people who are members of racial minority groups in Maine overlaps with the population of people who are refugees or family members of refugees. Functional disabilities are prevalent among refugees resettled in the US, and there is some evidence that language and communication barriers and a complex maze of service systems pose barriers at systems, provider, and individual levels<sup>25</sup>.

There is a lack of research and resources on how to promote psychosocial wellbeing among Indigenous people with IDD or autism. There are some promising findings for Indigenous children with autism and/or other neurodevelopmental disorders, and it is an open question whether those results might generalize to adults<sup>26</sup>.

### 3.4 More Specifically, What Policies, Institutions, or Actors Have Shaped these Inequalities, Disparities, and/or Disparate Impacts?

The relationship between disability and race is complex, but both are related to systemic inequality<sup>27</sup>. For example, disability has negative impacts on employment and earnings<sup>28</sup>, race is linked to poverty<sup>29</sup>, and environmental risks are associated with both—for example, blood lead level is associated with both race

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<sup>24</sup> Magaña, S., & Vanegas, S. B. (2021). Culture, race, and ethnicity and intellectual and developmental disabilities. In Glidden, L. M., Abbeduto, L., McIntyre, L. L., & Tassé, M. J. (Eds.), *APA handbook of intellectual and developmental disabilities: Foundations* (pp. 355-382). American Psychological Association. <https://doi.org/10.1037/0000194-000>

<sup>25</sup> Mirza, M., Luna, R., Mathews, B., Hasnain, R., Hebert, Niebauer, A., & Mishra, U. D. (2014). Barriers to healthcare access among refugees with disabilities and chronic health conditions resettled in the US Midwest. *Journal of Immigrant and Minority Health*, 16, 733-742. <https://doi.org/10.1007/s10903-013-9906-5>

<sup>26</sup> Shochet, I. M., Orr, J. A., Kelly, R. L., Wurfl, A. M., Saffers, B R., & Carrington, S. B. (2020). Psychosocial resources developed and trialled for Indigenous people with autism spectrum disorder and their caregivers: a systematic review and catalogue. *International Journal for Equity in Health*, 19, 134. <https://doi.org/10.1186/s12939-020-01247-8>

<sup>27</sup> Pokempner, J., & Roberts, D. E. (2001). Poverty, welfare reform, and the meaning of disability. *Ohio State Law Journal*, 62(1), 425-464. Also available from [https://scholarship.law.upenn.edu/faculty\\_scholarship/1361](https://scholarship.law.upenn.edu/faculty_scholarship/1361) (Retrieved February 16, 2022)

<sup>28</sup> United States Senate Committee on Health, Education, Labor & Pensions (2014, September 18). *Fulfilling the promise: Overcoming persistent barriers to economic self-sufficiency for people with disabilities. Majority committee staff report*. Retrieved February 16, 2022, from <https://www.help.senate.gov/imo/media/doc/HELP%20Committee%20Disability%20and%20Poverty%20Report.pdf>

<sup>29</sup> DeNavas-Walt, C., & Proctor, B. D. (2015). Income and poverty in the United States: 2014. *U.S. Census Bureau Current Population Reports, P60-252*. Washington, DC: US Government Printing Office. Retrieved February 16, 2022, from <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf>

and disability<sup>30</sup>. It is thus no surprise that rates of disability are higher among Hispanic and Black non-Hispanic Americans than among White non-Hispanic Americans<sup>31</sup>.

There is evidence, at least in children, of racial disparities in how behaviors are judged. For example, for African American children, teachers rate hyperactive behavior higher than the children or their parents do<sup>32</sup>. As for adults with intellectual disability, race has been reported to interact with autism such that, among people with intellectual disability and autism, White people are reported to exhibit more challenging behaviors than Black people, but among people with intellectual disability and no autism, Black people are reported to exhibit more challenging behaviors than White people<sup>33</sup>.

Yet, even with biases in ratings of behavior, autism tends to be diagnosed later in Black and Latino children<sup>34</sup>, and core social skills and communication goals are less likely to be included in the Individualized Education Program of children of parents with limited English proficiency<sup>35</sup>.

The research literature itself shows effects of structural racism<sup>36,37</sup>, and racism, ableism, and eugenics are all evident throughout Maine's history, such as in the notorious eradication of the mixed-race community on Malaga Island<sup>38</sup>, the confinement of people with disabilities (and people deemed to have disabilities) at the state institution at Pineland<sup>39,40</sup>, a history of racist relationships between non-Native colonial, US,

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<sup>30</sup> Pamuk, E., Makuc, D., Heck, K., Reuben, C., & Lochner, K. (1998). *Socioeconomic status and health chartbook. Health, United States, 1998*. Hyattsville, MD: National Center for Health Statistics. Retrieved February 16, 2022, from <https://www.cdc.gov/nchs/data/hus/hus98cht.pdf>

<sup>31</sup> Courtney-Long, E. A., Carroll, D. D., Zhang, Q. C., Stevens, A. C., Griffin-Blake, S., Armour, B. S., & Campbell, V. A. (2015). Prevalence of disability and disability type among adults—United States, 2013. *Morbidity and Mortality Weekly Report (MMWR)*, 64(29), 777-783. <https://doi.org/10.15585/mmwr.MM6429a2>

<sup>32</sup> Linton, K. F. (2018). Differential rating of specific behaviors of African American children in special education. *Child and Adolescent Social Work Journal*, 32, 229-235. <https://doi.org/10.1007/s10560-014-0363-3>

<sup>33</sup> Horovitz, M., Matson, J. L., Hattier, M. A., Tureck, K., & Bamburg, J. W. (2013). Challenging behavior in adults with intellectual disability: The effect of race and autism spectrum disorders. *Journal of Mental Health Research in Intellectual Disabilities*, 6(1), 1-13. <https://doi.org/10.1080/19315864.2011.605989>

<sup>34</sup> Reviewed in Zuckerman, K., Mattox, K. M., Sinche, B. K., Blaschke, G. S., & Bethell, C. (2013). Racial, ethnic, and language disparities in early childhood developmental/behavioral evaluation: A narrative review. *Clinical Pediatrics*, 53(7), 619-631. <https://doi.org/10.1177/0009922813501378>

<sup>35</sup> St. Amant, H. G., Schragger, S. M., Peña-Ricardo, C., Williams, M. E., & Vanderbilt, D. L. (2017). Language barriers impact access to services for children with autism spectrum disorders. *Journal of Autism and Developmental Disorders*, 48, 333-340. <https://doi.org/10.1007/s10803-017-3330-y>

<sup>36</sup> Johnson, K. R., Bogenschutz, M., & Peak, K. (2021). Propositions for race-based research in intellectual and developmental disabilities. *Inclusion*, 9(3), 156-169. <https://doi.org/10.1352/2326-6988-9.3.156>

<sup>37</sup> Jones, D. R., Nicolaidis, C., Garcia, A., Johnson, K. R., Lopez, K., & Waisman, T. C. (2020). An expert discussion on structural racism in autism research and practice. *Autism in Adulthood*, 2(4), 273-281. <https://doi.org/10.1089/aut.2020.29015.drj>

<sup>38</sup> Davenport, M. (2020). *Eugenics and Malaga Island*. Master's thesis, Harvard Extension School. <https://nrs.harvard.edu/URN-3:HUL.INSTREPOS:37365642>

<sup>39</sup> Murphy, S. T. (2011). *Voices of Pineland: Eugenics, social reform, and the legacy of "feeblemindedness" in Maine*. Charlotte, NC: Information Age Publishing.

<sup>40</sup> Conley, T. (2019). *Consolidating historical perspectives: Maine institutions for people with developmental disabilities*. Poster presented at University of Maine LEND Trainees' Research Poster Presentations, Augusta, ME. [https://digitalcommons.library.umaine.edu/cgi/viewcontent.cgi?article=1033&context=ccids\\_posters](https://digitalcommons.library.umaine.edu/cgi/viewcontent.cgi?article=1033&context=ccids_posters)



and state governments and societies and Native American tribes<sup>41,42</sup>, the lack of recognition of Native American sovereignty<sup>43</sup>, and the persistence of wait lists for Home and Community Based Services as well as inadequate support for people with disabilities who are on waivers, exacerbated by below-market compensation for people who support them. The low wages for direct support professionals also exacerbates, disparities, as direct support professionals are disproportionately Black and female, and average hourly wages of Black direct support professionals are even lower than for White direct support professionals<sup>44</sup>.

### 3.5 If Inequities are Exacerbated, What Actors, at What Levels of Influence, Could Reduce These Inequities?

Maine's HCBS waivers are only for adults, not for children, as Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services cover many needs of Medicaid-enrolled children with autism beyond those already covered in the Medicaid state plan<sup>45</sup>. However, states do have the option of using waivers to provide additional services to children, and in states that do have HCBS waivers for children, there is evidence that increased waiver generosity is associated with reduced odds of having unmet needs for Black children with autism compared to White children with autism<sup>46</sup>. Furthermore, in a sample including foreign-born parents of young children and Latino parent with limited English proficiency, greater stigma was associated with greater unmet needs<sup>47</sup>. If these sets of findings generalize to adults then it suggests that enhanced services to people receiving HCBS in Maine could reduce inequities in unmet needs and reduce stigma.

Peer navigators could also help address disparities—including peer navigators with disabilities<sup>25</sup>.

Data are needed to measure inequities, and they could be analyzed at the statewide level by the Department. The University of Maine Center for Community Inclusion and Disability Studies, the Disability and Aging Program at the University of Southern Maine Cutler Institutes, or other units within or without the University of Maine System could assist the Department with such analysis if needed.

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<sup>41</sup> Loring, D. (2009). The dark ages of education and a new hope. *New England Journal of Higher Education*, 24(1), 16-17. Retrieved February 16, 2022, from <https://files.eric.ed.gov/fulltext/EJ851043.pdf>

<sup>42</sup> Rolde, N. (2004). *Unsettled past, unsettled future: The story of Maine Indians*. Thomaston, ME: Tilbury House Publishers.

<sup>43</sup> Brimley, S. (2004). Native American sovereignty in Maine. *Maine Policy Review*, 13(2), 12-26. Retrieved February 16, 2022, from <https://digitalcommons.library.umaine.edu/cgi/viewcontent.cgi?article=1201&context=mpr>

<sup>44</sup> Hewitt, A., Pettingell, S., Bershady, J., Smith, J., Kleist, B., Sanders, M., ... Kramme, J. (2021). Direct support workforce and COVID-19 national report: Twelve-month follow-up. Minneapolis, MN: Institute of Community Integration, University of Minnesota. Retrieved February 25, 2022, from <https://publications.ici.umn.edu/community-living/covid19-survey-12-month-followup/main>

<sup>45</sup> Mann, C. (2014, July 7). *Clarification of Medicaid coverage of services to children with autism*. CMCS Informational Bulletin. Retrieved February 15, 2022, from <https://www.medicaid.gov/federal-policy-guidance/downloads/cib-07-07-14.pdf>

<sup>46</sup> LaClair, M., Mandell, D. S., Dick, A W., Iskandarani, K., Stein, B. D., & Leslie, D. L. (2019). The effect of Medicaid waivers on ameliorating racial/ethnic disparities among children with autism. *Health Services Research*, 54(4), 912-919. <https://doi.org/10.1111/1475-6773.13176>

<sup>47</sup> Zuckerman, K. E., Lindly, O. J., Reyes, N. M., Chavez, A. E., Cobian, M., Macias, K., ... Smith, K. A. (2018). Parent perceptions of community autism spectrum disorder stigma: Measure validation and associations in a multi-site sample. *Journal of Autism and Developmental Disorders*, 48, 3199-3209. <https://doi.org/10.1007/s10803-018-3586-x>

For several years, Maine had been participating in the National Core Indicators study, which, among other features, provides quantitative examination of racial disparities. Maine suspended participation during the pandemic. Resuming participation in the National Core Indicators study could allow ongoing examination of Maine’s performance on measures in the survey. There are also opportunities expected to participate in other multi-state data collection initiatives such as person-center measures currently being field tested by the Rehabilitation Research and Training Center on HCBS Outcome Measurement<sup>48</sup> at the University of Minnesota Institute on Community Integration.

Regardless of whether LD 1574 is enacted, the Department could collect and analyze data on patterns related to race, ethnicity, and linguistically and culturally diverse groups—using both survey instruments such as those described above as well as in other data available to the Department such as in the following:

- Number of HCBS waiver applications per year
- Proportion of people admitted to Section 21 waiver
- Proportion of people on Section 21 list in each priority
- Number of people on Section 21 waiver
- Number of people on Section 29 waiver
- Amount of time spent on waitlists
- Access to services by people on each waiver
- Quality of person-centered plans
- Number of people on positive behavior support plans
- Number of people on behavior management plans
- Number of people experiencing at least one critical incident in a year
- Number of critical incidents per year
- Visits per person per year to emergency departments
- Prevalence of extended stays in emergency departments
- Unmet needs identified on person-centered plan
- Access to primary health care
- Access to linguistically and culturally competent support
- Average per-person expenditures

Recognizing the need to redact data and/or pool data across time to protect privacy, results could be shared with the Legislature and with stakeholders following the model of accessible data analysis in California, where one of that state’s three University Centers for Excellence in Developmental Disabilities has collaborated with its Developmental Disabilities Council to share annual data with stakeholders in an accessible format. The Maine Department of Health and Human Services could also work with stakeholders to create an accessible data dashboard hosted on the Department’s website.

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<sup>48</sup> <https://rtcom.umn.edu/>



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## **PRELIMINARY Racial Impact Statement for LD 1693, *An Act to Advance Health Equity, Improve the Well-being of All Maine People and Create a Health Trust***

Drafted by Sarah Goan, Director of the Data Innovation Project at the University of Southern Maine's Cutler Institute / [sarah.goan@maine.edu](mailto:sarah.goan@maine.edu)  
February 25, 2022

### **Summary of Key Points**

- LD 1693 would establish the Trust for a Healthy Maine to support disease prevention efforts and promote public health with a particular focus on reducing health disparities through designated funds and an Office of Health Equity.
- Publicly available health surveillance data and US Census data identify multiple racial disparities that exist in the State of Maine regarding health and well-being, all of which are backed up by national research.
- A wide range of other sources of data were not readily available for this pilot study but could offer additional insights into existing disparities.
- LD 1693 proposes strategies known to address racial health disparities and can be expected to diminish the observed health disparities among historically disadvantaged populations.

### **Background**

LD 1693 would establish the Trust for a Healthy Maine to receive all Master Tobacco Settlement funds and other funds and redistribute these fiscal resources to state agencies and designated community-based agencies to fund tobacco use prevention efforts at levels recommended by the United States Department of Health and Human Services, Centers for Disease Control and Prevention. Further funds would be used to fund other disease prevention efforts and promote public health. In short, the bill would establish among other things the following:

- The establishment of the Trust for a Healthy Maine Board
- The creation of a health equity and health improvement account to address health disparities and structural inequities
- The formation of an Office of Health Equity
- The adoption of obesity prevention standards in nutrition and physical activity in early care and education
- The adoption of obesity prevention standards in nutrition and physical activity in public schools
- The formulation of definitions for electronic smoking devices and “flavored tobacco” products; and rules forbidding the sale or distribution of these flavored tobacco products
- The new tax imposed on all cigarettes

### **Methods and Limitations**

The impact statement uses available public health surveillance data and US Census data to

identify the existing racial disparities in the State of Maine that would be directly influenced by the proposed legislation. Specifically, we rely upon data from the following sources:

- Maine Integrated Youth Health Survey (MIYHS), 2019<sup>1</sup>
- American Community Survey (ACS), 2015-2019<sup>2</sup>
- Behavioral Risk Factor Surveillance Survey (BRFSS), 2016-2020<sup>3</sup>
- Pregnancy Risk Assessment Monitoring System (PRAMS, 2016-2019)<sup>4</sup>

For the ACS, BRFSS and PRAMS, multi-year estimates improve the accuracy and reportability of the data by race. With additional time, resources and data access, a more nuanced analysis could be conducted within these public health datasets to project the proportion of BIPOC youth in Maine who would be affected by changing the existing thresholds for obesity and nutrition prevention efforts, and the impact of further restricting vaping and tobacco/nicotine products.

### **Evidence of Existing Health Disparity**

According to the US Centers for Disease Control, “health disparities are differences in health outcomes and their causes among groups of people.” A growing body of research<sup>5</sup> links overall health and well-being to the conditions in which people live, learn, work and play. These *social determinants of health* (education, housing, wealth and employment) have been impacted by centuries of racism, which manifests in a wide range of health disparities among communities of color that persist today.<sup>6</sup> Two examples of health disparity from the past year are the disproportionate rates of COVID-19 within populations of color, both in Maine and nationwide,<sup>7,8</sup> and the persistence of maternal mortality for Black Women.<sup>9</sup>

The following bullets contain some examples of the health disparities that exist in Maine which could be impacted by the proposed legislation.

#### *Health Disparity: School-aged Youth*

- **Tobacco use:** Black or African American and American Indian or Alaska Native high school students are slightly more likely than their White counterparts to smoke, with approximately 8.9% and 14.9% of them respectively smoking at least one cigarette per day compared to 6.6% of White high school students (MIYHS, 2019).
  - Of current cigarette smokers, 7.7% of White students and 20.8% of Black students reported smoking more than 10 cigarettes a day (MIYHS, 2019).
- **Vaping:** American Indian or Alaska Native high school students are slightly more likely than their white counterparts to use vaping products, with approximately 34.3% using an

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<sup>1</sup> Accessed from the MIYHS website: <https://www.maine.gov/miyhs/2019-results>

<sup>2</sup> Access from the US Census website: <https://data.census.gov/cedsci/>, Table S2701, ACS 5-Year Estimates

<sup>3</sup> Accessed from the Web Enabled Analysis Tool: <https://nccd.cdc.gov/weat/#/crossTabulation/selectYear>

<sup>4</sup> Access from the PRAMS dashboard: <https://www.maine.gov/dhhs/mecdc/public-health-systems/data-research/prams/prams-dashboard.shtml>

<sup>5</sup> For a searchable database of 426 research studies on the social determinants of health conducted by the US CDC, visit:

<https://www.cdc.gov/socialdeterminants/research.html?Sort=Article%20Date%3A%3Adesc>

<sup>6</sup> <https://www.cdc.gov/socialdeterminants/about.html>

<sup>7</sup> <https://www.pressherald.com/2020/06/21/maine-has-nations-worst-covid-19-racial-disparity/>

<https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/airborne/coronavirus/data.shtml>

<sup>8</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-hospitalization.html>

<sup>9</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7384760/>

electronic vapor produce on at least one day in the past month compared to 28.6% of White high school students (MIYHS, 2019).

- **Overweight and Obesity:** The percentage of White middle school students who were overweight was 17.3% compared to 16.2% of Black or African Americans and 15.7% of American Indians/Alaska Natives. The obesity rates were different with only 14.9% of white middle school student categorized as obese compared to 19.2% and 20.9% among Black/African American and American Indian/Alaska Native middle school students respectively (MIYHS, 2019).
  - The percentage of White high school students who were overweight and/or obese was 31.0% compared to 36.5% of Black or African Americans and 42.4% of American Indians/Alaska Natives high school students (MIYHS, 2019).
- **Physical Activity:** The percentage of White high school students who engaged in 60 minutes of physical activity on five of the past 7 days was 45.0% compared to 33.9% of Black or African Americans and 40.8% of American Indians/Alaska Natives (MIYHS, 2019).

### Health Disparity: Adults

- **Health Status:** Data covering a 5-year period (2016-2020) estimates 45% of Non-White Mainers reported that their health was very good or excellent, compared with 54% of White Mainers (BRFSS, 2016-2020).
- **Health insurance status:** In Maine 82% of American Indian/Alaskan Natives had health insurance, followed by 86% of Native Hawaiian/Pacific Islanders, 87% of Hispanic or Latinx and 88% of Black or African Americans. Whites were insured at a rate of 92% (ACS, 2015-2019).
- **Maternal Health:** Only 60% of Black or African American women reported getting prenatal care as early as they wanted, compared with 91% of White women (PRAMS 2016-2019).
- **Tobacco use:** Data covering a 5-year period (2016-2020) estimates that approximately 23% of non-White Mainers are current smokers, compared with 14% of White Mainers (BRFSS, 2016-2020).

### **Conclusion and Other Considerations**

There are numerous sources of data related to health and wellbeing in Maine, some of the most accessible of which have been cited here. Some topics which may be impacted by this legislation but were not explored due to limited capacity and feasibility during this pilot include: health disparities for diseases related to obesity and tobacco use; behavioral health disparities (e.g., mental health, substance use, and access to treatment); access to different types of healthcare services; environmental health factors; and the quality of care and services received. Moreover, the range of health data sources offer unique strengths and challenges in terms of quality, timeliness, accessibility to researchers/analysts, health privacy laws, and the ability to be disaggregated by racial demographics. With more time, resources, and analytic capacity, a research team could compile more indicators, gather more research, or conduct more complex analysis.

Nonetheless, a sample of indicators from existing public health data for the State of Maine were available and demonstrate that significant health disparities exist for Mainers who identify as BIPOC. An Office of Health Equity, with dedicated funding, creates a strategic focus on health disparities and the social determinants of health, and provides a structure within which to promote opportunities for health equity in Maine. Restricting access to tobacco products and increasing taxation are well known and evidence-based approaches to reducing tobacco use and are cited as key strategies to promote health equity.<sup>10</sup> Similarly, efforts to expand childhood obesity prevention efforts are also cited as health equity initiatives.<sup>11</sup> **As such, if LD 1693 becomes law, the people of Maine may expect these observed health disparities among historically disadvantaged populations to diminish.**

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<sup>10</sup> <https://www.cdc.gov/tobacco/stateandcommunity/guides/pdfs/bp-health-equity.pdf>

<sup>11</sup> <https://www.cdc.gov/nccdphp/dnpao/health-equity/state-health-equity-toolkit/pdf/toolkit.pdf>