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An Act To Address Severe and Ongoing Shortfalls in the Funding of Direct Care Workers in Long-term Care Settings and To Establish the Commission To Study Long-term Care Workforce Issues

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the people of the State of Maine need and deserve a variety of well-planned and financially stable long-term care services in home-based and community-based care settings and in residential care and nursing facilities in their communities; and

Whereas, in order to provide high-quality care to Maine's elderly and disabled persons in a dignified and professional manner that is sustainable into the future through a spectrum of long-term care services, prompt action is needed to correct chronic underfunding and to complete a thoughtful and thorough planning process; and

Whereas, additional reimbursement under the MaineCare program is immediately needed to fairly and properly compensate facilities and programs for the impact of recent changes in the minimum wage laws; and

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

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

Sec. 1. Rate increases for certain personal care and related services. The Department of Health and Human Services shall amend its rules in 10-144, Chapter 101: MaineCare Benefits Manual, Chapter III, Section 12, Allowances for Consumer-Directed Attendant Services; Chapter III, Section 19, Home and Community Benefits for Elderly and Adults with Disabilities; and Chapter III, Section 96, Private Duty Nursing and Personal Care Services; and in 10-149, Chapter 5: Office of Aging and Disability Services Policy Manual, Section 63, In-Home and Community Support Services for Elderly and Other Adults; and 14-197, Chapter 11: Consumer Directed Personal Assistance Services, to provide for the following rate increases.

1. Rate increases for fiscal year 2017-18 based on Burns & Associates, Inc. rate review. For the state fiscal year ending June 30, 2018, the MaineCare payment rates for personal care and related services under each of the provisions under this section must be increased to the levels necessary to fully fund and implement the recommendations in "Rate Review for Personal Care and Related Services: Final Rate Models," the report prepared by Burns & Associates, Inc. dated February 1, 2016.

2. Rate increases for fiscal year 2018-19. For the state fiscal year ending June 30, 2019, the MaineCare payment rates for personal care and related services under each of the provisions under this section calculated under subsection 1 must be increased by 10%.

Sec. 2. Rate increases for adult family care services, adult day services and homemaker services. The Department of Health and Human Services shall amend its rules in 10-144, Chapter 101: MaineCare Benefits Manual, Chapter III, Section 2, Adult Family Care Services; Chapter III, Section 26, Day Health Services; and in 10-149, Chapter 5: Office of Aging and Disability Services Policy Manual, Section 61, Adult Day Services and Section 69, Independent Support Services Program, to provide for the following rate increases.

1. Rate increases for fiscal year 2017-18. For the state fiscal year ending June 30, 2018, the MaineCare payment rates attributable to wages and salaries for personal care and related services under each of the provisions under this section must be increased by 10%.

2. Rate increases for fiscal year 2018-19. For the state fiscal year ending June 30, 2019, the MaineCare payment rates attributable to wages and salaries for personal care and related services under each of the provisions under this section calculated under subsection 1 must be increased by 10%.

Sec. 3. Rate increases for nursing facilities. The Department of Health and Human Services shall amend its rule in 10-144, Chapter 101: MaineCare Benefits Manual, Chapter III, Section 67, Principles of Reimbursement for Nursing Facilities to provide for the following rate changes to address the recent changes in the minimum wage laws and the ongoing shortfall in funding needed to compensate direct care workers.

1. Rate increases for fiscal year 2017-18. For the state fiscal year ending June 30, 2018, an extraordinary circumstance supplemental allowance must be made as required by section 34 of the Principles of Reimbursement for Nursing Facilities equal to 10% of the portion of each facility's prospective and final prospective rate that is attributable to wages and wage-related benefits in both the direct care cost component and routine care cost component. This supplemental allowance must be provided as part of each facility's prospective rate, notwithstanding any otherwise applicable caps or limits on reimbursement. This supplemental allowance must also be allowed and paid at final audit to the full extent that the facility has reported increased costs for wages and wage-related benefits, notwithstanding any otherwise applicable caps or limits on reimbursement, including without limitation the amount of the supplemental allowance added to prospective payment rates.

2. Rate increases for fiscal year 2018-19. For the state fiscal year ending June 30, 2019, an additional extraordinary circumstance supplemental allowance must be made as required by section 34 of the Principles of Reimbursement for Nursing Facilities equal to 10% of the portion of each facility's prospective and final prospective rate that is attributable to wages and wage-related benefits in both the direct care cost component and routine care cost component. This supplemental allowance must be provided as part of each facility's prospective rate, notwithstanding any otherwise applicable caps or limits on reimbursement. This supplemental allowance must also be allowed and paid at final audit to the full extent that the facility has reported increased costs for wages and wage-related benefits, notwithstanding any otherwise applicable caps or limits on reimbursement, including without limitation the amount of the supplemental allowance added to prospective payment rates.

Sec. 4. Rate increases for residential care facilities. The Department of Health and Human Services shall amend its rules in 10-144, Chapter 101: MaineCare Benefits Manual, Chapter III, Section 97, Appendix C, Principles of Reimbursement for Medical and Remedial Service Facilities; and 10-144, Chapter 115: Principles of Reimbursement for Residential Care Facilities - Room and Board Costs to provide for the following rate changes.

1. Rate increase for fiscal year 2017-18. For the state fiscal year ending June 30, 2018, additional reimbursement by a supplemental payment of 10% of the portion of the facility's per diem rate that is attributable to wages, wage-related benefits and workers' compensation must be added to the per diem rate until the department adjusts the direct care pricer, the routine limit and the personal care services limit, as applicable, to incorporate this 10% increase going forward. This increase must be provided as part of each facility's per diem rate notwithstanding any otherwise applicable caps or limits on reimbursement. This supplemental payment must also be allowed and paid at final audit to the full extent that the facility has reported increased costs for wages, wage-related benefits and workers' compensation, notwithstanding any otherwise applicable caps or limits on reimbursement, including without limitation the amount of the supplemental payment added to prospective payment rates.

2. Rate increase for fiscal year 2018-19. For the state fiscal year ending June 30, 2019, additional reimbursement by a supplemental payment of 10% over the payment rate calculated under subsection 1 of the portion of the facility's per diem rate that is attributable to wages, wage-related benefits and workers' compensation must be added to the per diem rate until the department adjusts the direct care pricer, the routine limit and the personal care services limit, as applicable, to incorporate this 10% increase going forward. This increase must be provided as part of each facility's per diem rate notwithstanding any otherwise applicable caps or limits on reimbursement. This supplemental payment must also be allowed and paid at final audit to the full extent that the facility has reported increased costs for wages, wage-related benefits and workers' compensation, notwithstanding any otherwise applicable caps or limits on reimbursement, including without limitation the amount of the supplemental payment added to prospective payment rates.

Sec. 5. Commission To Study Long-term Care Workforce Issues. Notwithstanding Joint Rule 353, the Commission To Study Long-term Care Workforce Issues, referred to in this section as "the commission," is established.

1. Members. The commission consists of up to 18 members as follows:

A. Two members of the Senate appointed by the President of the Senate, including a member from each of the 2 parties holding the largest number of seats in the Legislature;

B. Three members of the House of Representatives appointed by the Speaker of the House, including a member from each of the 2 parties holding the largest number of seats in the Legislature; and

C. Up to 13 members who possess expertise in the subject matter of the study as follows:

(1) A direct care worker appointed by the President of the Senate;

(2) A provider of home-based long-term care who is a member of a statewide association representing home-based long-term care providers appointed by the President of the Senate;

- (3) A representative of a statewide association representing nonprofit housing and senior service programming appointed by the President of the Senate;
- (4) A representative of an organization providing services to individuals with intellectual disabilities and autism including employment services and long-term home supports appointed by the President of the Senate;
- (5) A provider of facility-based long-term care who is a member of a statewide association representing facility-based long-term care providers appointed by the Speaker of the House;
- (6) A representative of an organization providing statewide homemaker services through the state-funded independent support services program within the Department of Health and Human Services appointed by the Speaker of the House;
- (7) A representative of an institution of higher education engaged in workforce development appointed by the Speaker of the House;
- (8) A representative of a service coordination agency providing service coordination to people receiving home-based and community-based long-term care appointed by the Speaker of the House;
- (9) A representative of an organization promoting independent living for individuals with disabilities appointed by the Speaker of the House;
- (10) A representative of a business that acts as a labor intermediary helping unemployed and underemployed people obtain employment appointed by the Speaker of the House;
- (11) The executive director of the long-term care ombudsman program described under the Maine Revised Statutes, Title 22, section 5106, subsection 11-C;
- (12) The Commissioner of Health and Human Services, or the commissioner's designee, who may be invited to participate; and
- (13) The Commissioner of Labor, or the commissioner's designee, who may be invited to participate.

2. Chairs and subcommittees. The first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the commission. The chairs of the commission are authorized to establish subcommittees to work on the duties listed in subsection 4 and to assist the commission. The subcommittees must be composed of members of the commission and interested persons who are not members of the commission and who volunteer to serve on the subcommittees without reimbursement.

3. Appointments. All appointments must be made no later than 30 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members and after adjournment of the First Regular Session of the 128th Legislature, the chairs shall call and convene the first meeting of the commission. If 30 days or more after the effective date of this Act a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the commission to meet and conduct its business.

4. Directive of commission. The commission shall study and make policy recommendations in each of the following areas:

- A. Measuring current demand for direct care workers and projecting future needs;
- B. Developing a campaign and statewide recruitment strategies to encourage more people to work in facility-based and home-based long-term care;
- C. Supporting career ladders throughout various long-term care settings;
- D. Identifying education needs and methods to fill education needs for direct care workers;
- E. Identifying barriers to hiring and methods to overcome barriers to hiring;
- F. Developing strategies to improve the quality of long-term care jobs; and
- G. Increasing opportunities for shared staffing among long-term care providers.

The commission shall make policy recommendations for public and private funding mechanisms to implement the commission's recommendations.

5. Program. The commission shall make recommendations for the establishment of a program that will contribute to long-term care direct care workers' postsecondary education in related fields.

6. Pilot program. The commission shall make recommendations for the establishment of a pilot program to pool part-time home care workers' hours for purposes of providing greater employment opportunity and obtaining employee benefits.

7. Staffing. The Legislative Council shall provide necessary staffing services to the commission.

8. Administration. The Commissioner of Health and Human Services, the State Auditor and the State Budget Officer shall provide necessary information and assistance to the commission as required for the commission's duties.

9. Report. No later than October 15, 2017, the commission shall submit a report that includes its findings and recommendations pursuant to subsections 4 to 6, including suggested legislation, to the Joint Standing Committee on Health and Human Services. The joint standing committee may report out a bill regarding the subject matter of the report to the Second Regular Session of the 128th Legislature.

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

SUMMARY

This bill directs the Department of Health and Human Services to increase MaineCare payment rates for certain personal care and related services, including those set forth in 10-144, Chapter 101: MaineCare Benefits Manual, Chapter III, Section 12, Allowances for Consumer-Directed Attendant Services; Chapter III, Section 19, Home and Community Benefits for Elderly and Adults with Disabilities; and Chapter III, Section 96, Private Duty Nursing and Personal Care Services; and in 10-149, Chapter 5: Office of Aging and Disability Services Policy Manual, Section 63, In-Home and Community Support Services for Elderly and Other Adults; and 14-197, Chapter 11: Consumer Directed Personal Assistance Services. For fiscal year 2017-18, these payment rates will be increased to the levels necessary to fully fund and implement the recommendations in "Rate Review for Personal Care and Related Services: Final

Rate Models," the report prepared by Burns & Associates, Inc. dated February 1, 2016. For fiscal year 2018-19, these payment rates are increased by an additional 10%.

The bill directs the department to increase MaineCare payment rates for certain adult family care services, adult day services and homemaker services, including those set forth in 10-144, Chapter 101: MaineCare Benefits Manual, Chapter III, Section 2, Adult Family Care Services; Chapter III, Section 26, Day Health Services; and in 10-149 Chapter 5: Office of Aging and Disability Services Policy Manual, Section 61, Adult Day Services and Section 69, Independent Support Services Program. For fiscal year 2017-18, these payment rates will be increased by 10%. For fiscal year 2018-19, these payment rates will be increased by an additional 10%.

The bill directs the department to increase MaineCare payment rates for nursing facilities set forth in 10-144, Chapter 101: MaineCare Benefits Manual, Chapter III, Section 67, Principles of Reimbursement for Nursing Facilities. For fiscal year 2017-18, an extraordinary circumstance supplemental allowance will be made that is equal to 10% of the portion of each facility's prospective and final prospective rate that is attributable to wages and wage-related benefits in both the direct care cost component and routine care cost component. For fiscal year 2018-19, an additional extraordinary circumstance supplemental allowance of 10% will be made. In each year, this supplemental allowance will be provided as part of each facility's prospective rate, notwithstanding any otherwise applicable caps or limits on reimbursement. This supplemental allowance will also be allowed and paid at final audit to the full extent that the facility has reported increased costs for wages and wage-related benefits, notwithstanding any otherwise applicable caps or limits on reimbursement, including without limitation the amount of the supplemental allowance added to prospective payment rates.

The bill directs the department to increase MaineCare payment rates for facilities set forth in 10-144, Chapter 101: MaineCare Benefits Manual, Chapter III, Section 97, Appendix C, Principles of Reimbursement for Medical and Remedial Service Facilities; and 10-144, Chapter 115: Principles of Reimbursement for Residential Care Facilities - Room and Board Costs. For fiscal year 2017-18, a supplemental payment will be provided equal to 10% of the portion of the facility's per diem rate that is attributable to wages, wage-related benefits and workers' compensation. For fiscal year 2018-19, an additional supplemental payment of 10% will be provided. In each year, this supplemental payment will be added to the per diem rate until the department adjusts the direct care pricer, the routine limit and the personal care services limit, as applicable, to incorporate this 10% increase going forward. In each year, this increase will be provided as part of each facility's per diem rate notwithstanding any otherwise applicable caps or limits on reimbursement. In each year, this supplemental payment will also be allowed and paid at final audit to the full extent that the facility has reported increased costs for wages, wage-related benefits and workers' compensation, notwithstanding any otherwise applicable caps or limits on reimbursement, including without limitation the amount of the supplemental payment added to prospective payment rates.

The bill also establishes the Commission To Study Long-term Care Workforce Issues.