

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: May 5, 2021
To: Joint Standing Committee on Health & Human Services
From: Anna Broome, Legislative Analyst

LD 1573 An Act To Implement the Recommendations for the Commission To Study Long-term Care Workforce Issues

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

1. It directs the Department of Health and Human Services to establish a 2-year rebasing requirement to set and increase reimbursement rates for in-home and community support services.
2. It requires direct care workers across the long-term care spectrum to be paid no less than 125% of the minimum wage set in Title 26, section 664 (the minimum wage). This applies to MaineCare, state-funded programs, residential and in-home care, and the private sector. It also amends Title 26, section 664 to exclude direct care workers from the minimum wage law.
3. It requires the Department of Health and Human Services to adopt rules that take into account the requirements for 125% of the minimum wage in its reimbursement rates.
4. It requires the Department of Health and Human Services to adopt rules to increase reimbursement rates under rule Chapter 101: MaineCare Benefits Manual and any state-funded programs to take into account costs of providing care and services in conformity with applicable state and federal laws, rules, regulations, training requirements and quality and safety standards, including, but not limited to, increases in the minimum wage for workers other than direct care workers, earned paid leave, electronic visit verification, background checks and other costs that are not provided for in the current reimbursement rates and to not reduce a reimbursement rate below that on the effective date of this bill.
5. It establishes the Long-term Care Workforce Oversight Advisory Committee to collect and compile data related to workforce shortages and services provided to clients, review progress by DHHS regarding recommendations provided to the department and the health and human services committee, including the recommendations of the Commission To Study Long-term Care Workforce Issues, identify barriers to implementing recommendations and

make recommendations on proposals to address long-term care workforce shortages. The Department of Health and Human Services, the Department of Labor and the Department of Education are directed to provide to the oversight committee quarterly reports on the progress and efforts to implement the recommendations of the oversight committee and of the Commission To Study Long-term Care Workforce Issues. The oversight committee must submit an annual report to the health and human services committee of the Legislature.

ISSUES FROM TESTIMONY:

- Request for “essential care worker” rather than “direct care worker.”
- Who is included? Are behavioral health workers included?
- What does the 125% of the minimum wage refer to? Discussions about 125% of the minimum wage as baseline for the labor portion of rates. Questions as to whether 125% is sufficient. Rates set by the State so not subject to market forces; end up lower than other sectors of the economy. Additional costs to providers, e.g. paid time off, EVV.
- Other recommendations from the Commission not included in the bill, e.g. training recommendation, increasing number of adult day and respite hours allowed, raising caps for assistive technology and e-mods, pooling workers.
- Oversight Committee role discussed. Request for inclusion, e.g. OAB, for changing the name, and for advising DoL as well.
- DHHS: drafting of A-1 – is the intent to move from a fee schedule to cost-settled? Providers do not bill this way. If the intent is adjusting for inflation, this is similar to the Comprehensive Rate System Evaluation recommendation. Some rates have been increased recently, others are higher than other state comparisons, some are already benchmarked to Medicare. Who would enforce 125% outside of MaineCare? Oppose establishment of oversight advisory committee – already working with stakeholders and the MaineCare Advisory Committee.

DRAFTING ISSUES:

- 125% of the minimum wage for direct care workers applies to MaineCare, state-funded programs, residential care, and the private sector. It isn't necessary to include Sec. A-3. Usually exclusions from the minimum wage are lower than the minimum wage. The proposed §7402 would govern the wage for direct care workers (in the same way as the prevailing wage laws in Title 26, chapter 15 govern those wages and they are not mentioned in §664).

The language is tied specifically to the *state* minimum wage and appears to be unaffected by local minimum wage ordinances (unless 125% of the minimum wage is lower than a local minimum wage ordinance).

- Does the definitions of direct care worker still work if including behavioral health? Sufficient for DD and autism as well? Tied to ADLs and IADLs.
- Need to clarify the rules being adopted by DHHS for reimbursement – can only apply to MaineCare and general fund programs not all direct care worker wages.
- Part B of the bill establishes the Long-term Care Workforce Oversight Advisory Committee to collect data on unstaffed hours and vacancies, needs of direct care workers, review quarterly reports from DHHS, DoL, DoE on implementing recommendations of the task force, and make recommendations to DHHS and HHS to increase the workforce. Several recommendations of the Task Force that have not been discussed – does the Legislature assume that they should all be implemented? For example, support the rate setting commission legislation that was rejected by the Legislature in the 129th.
- Who staffs the oversight committee and writes the report?
- DHHS questions about A-1.

ADDITIONAL INFORMATION REQUESTED BY COMMITTEE:

- Executive summary of the Long Term Care Work Force Commission attached separately.
- Other letter requests from the HHS committee in the 129th forwarded to the Committee per Rep. Fay's request (part of the recommendations that are not included in the bill).

FISCAL IMPACT:

Not yet received.