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SENATE BILL DRS35247-MRa-97A

Short Title: Address Direct Sup. Staffing Crisis/Medicaid. (Public)

Sponsors: Senators Burgin, Krawiec, and Perry (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ADDRESS THE STAFFING CRISIS IMPACTING INTERMEDIATE CARE
3 FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES.

4 Whereas, staffing turnover rates for direct support personnel providing services and
5 support to individuals with intellectual and other developmental disabilities have increased
6 substantially during the past two years; and

7 Whereas, direct support personnel are front-line health care service providers who are
8 responsible for all aspects of the day-to-day habilitation, care, and support of persons with
9 intellectual and other developmental disabilities; and

10 Whereas, it is the intent of the General Assembly to preserve and improve the quality
11 and consistency of care for persons with intellectual and other developmental disabilities who
12 receive services and support in intermediate care facilities for individuals with intellectual
13 disabilities (ICF/IIDs), including ICF/IID group homes; and

14 Whereas, it is the intent of the General Assembly to improve the retention rates and
15 hiring rates for qualified direct support personnel who are the front line of care provision and
16 service delivery in ICF/IIDs; and

17 Whereas, because recruitment and retention of qualified direct support personnel are
18 critical to the delivery of quality, effective habilitation and support services, it is imperative that
19 the hourly wages paid to direct care personnel be competitive and comparable to the hourly wages
20 paid to employees in retail, food service, and State-operated developmental centers; Now,
21 therefore,

22 The General Assembly of North Carolina enacts:

23 **SECTION 1.(a)** ICF/IID Support Personnel. – The Department of Health and
24 Human Services, Division of Health Benefits (DHB), shall adjust the per member per month
25 (PMPM) capitation amount paid to local management entity/managed care organizations
26 (LME/MCOs) operating capitated contracts for mental health, intellectual and other development
27 disabilities, and substance abuse services to include amounts sufficient to increase wages paid to
28 direct support personnel working in intermediate care facilities for individuals with intellectual
29 disabilities (ICF/IIDs), including ICF/IID group homes, to align the wages paid to these direct
30 support personnel with the current wages paid to State employees in State-owned developmental
31 centers. The following shall apply to PMPM capitation amount adjustments made under this
32 section:

- 33 (1) The adjustments shall be consistent with the North Carolina Medicaid State
34 Plan requirements to provide for actuarially sound rates sufficient to operate
35 and provide safe and effective services.



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- 1 (2) DHB shall validate the actual amounts necessary to adjust the relevant portion
2 of the LME/MCO PMPM capitation payment to align wages paid to direct
3 support personnel with current wages paid to State employees in State-owned
4 developmental centers.
- 5 (3) The adjustments shall be considered directed payments made to LME/MCOs
6 under 42 C.F.R. § 438.6, in order to assure that the increased amounts are used
7 for wage increases.
- 8 (4) Providers receiving any increase in funds from LME/MCOs to be used for
9 wage increases shall attest and provide verification that those increased funds
10 are being used for the purpose of increasing wages paid to direct support
11 personnel and employees who support direct support personnel. LME/MCOs
12 may require verifiable methods of accounting, such as payroll-based journals.

13 After the implementation of this section, DHB shall continue to work with
14 stakeholders and service providers to develop an appropriate methodology for tracking progress
15 towards increasing direct support personnel wages and to determine if any additional resources
16 are necessary to achieve alignment of these wages with the current wages paid to State employees
17 in State-owned developmental centers.

18 **SECTION 1.(b) Funds for Rate Adjustments Made Under This Section.** – There is
19 appropriated from the General Fund to the Department of Health and Human Services, Division
20 of Health Benefits, the sum of seventeen million five hundred thousand dollars (\$17,500,000) in
21 recurring funds for the 2021-2022 fiscal year and the sum of twenty-one million eight hundred
22 thousand dollars (\$21,800,000) in recurring funds for the 2022-2023 fiscal year to be used to
23 adjust the PMPM capitation amount paid to LME/MCOs in accordance with this section. These
24 funds shall provide a State match for fifty-nine million four hundred thousand dollars
25 (\$59,400,000) in recurring federal funds for the 2021-2022 fiscal year and fifty-five million six
26 hundred thousand dollars (\$55,600,000) for the 2022-2023 fiscal year, and those federal funds
27 are appropriated to the Division of Health Benefits to be used to adjust the PMPM capitation
28 amount paid to LME/MCOs in accordance with this act.

29 In addition to the appropriations under this section, DHB shall maximize the ICF/IID
30 assessment, established under Section 10.8(a) of S.L. 2004-124, and, notwithstanding Section
31 10.8(c) of S.L. 2004-124, shall utilize the proceeds for the purpose of implementing this act.

32 **SECTION 1.(c) Cost-of-Living Adjustments.** – To the extent practicable, the
33 General Assembly recommends that, when setting the PMPM capitation amount paid to
34 LME/MCOs for future capitation rate cycles, DHB take into account cost-of-living adjustments
35 and wage and hour cost-of-living adjustments for direct support personnel working in ICF/IIDs,
36 including ICF/IID group homes, in an amount equal to those adjustments made for similar
37 personnel working in State-operated developmental centers.

38 **SECTION 2. Methodology for Determining Appropriate Wages to Be Paid.** – To
39 establish a baseline methodology for determining the appropriate wages to be paid in accordance
40 with this act, the Department of Health and Human Services, Division of Health Benefits (DHB),
41 shall use information from the Office of State Human Resources job classification and wage and
42 hour data for the specific employees working at State-operated developmental centers who are
43 in comparable job classifications as those direct support personnel working in intermediate care
44 facilities for individuals with intellectual disabilities (ICF/IIDs), including ICF/IID group homes.
45 DHB shall make appropriate adjustments for health insurance, retirement benefits, and other key
46 factors that drive total labor costs. DHB shall also take into consideration market-based wage
47 comparisons of direct support personnel working in ICF/IIDs with State employees working in
48 the State-operated developmental centers, direct support personnel working in private work
49 settings, including health care facilities and health services settings, and employees working in
50 private sector businesses that compete to hire the same employees, such as retail and fast food.
51 DHB may accept actuarially sound projections of competitive wage and hour data and other cost

1 data from non-State entities in order to calculate forward looking wage analysis formulas and
2 finalize the exact rates needed to implement this act.

3 **SECTION 3. Mid-Rate Cycle Adjustments.** – If a local management entity/managed
4 care organization implements a provider rate increase or adjustment in accordance with this act
5 at any time other than the beginning of a rate cycle, then the Department of Health and Human
6 Services, Division of Health Benefits, shall provide the funds necessary to sustain that rate
7 increase or adjustment in the applicable per member per month capitation amount for the next
8 rate cycle.

9 **SECTION 4. Approval by the Centers for Medicare and Medicaid Services Required**
10 **Before Implementation.** – The Department of Health and Human Services, Division of Health
11 Benefits (DHB), is directed to seek approval from the Centers for Medicare and Medicaid
12 Services (CMS) prior to implementing the rate increases described under Section 1 of this act.
13 Upon approval, DHB shall implement the rate increases to the extent allowed by CMS.

14 **SECTION 5. Effective Date.** – Sections 1, 2, and 3 of this act become effective upon
15 the approval by CMS required by Section 4 of this act. The Secretary shall notify and provide
16 verification to the Office of State Budget and Management and the Fiscal Research Division
17 upon receipt of this approval. The remainder of this act becomes effective July 1, 2021. If the
18 approval required by Section 4 of this act is not granted by CMS prior to June 30, 2023, then this
19 act shall expire on that date.