

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL DRS45313-MRa-108A

Short Title: Direct Care Worker Wage Passthrough/Medicaid. (Public)

Sponsors: Senators Murdock, Nickel, and Mayfield (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE WAGES OF DIRECT CARE PROFESSIONALS SERVING
3 CERTAIN MEDICAID BENEFICIARIES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** Rate Increase Option. – The Department of Health and Human
6 Services, Division of Health Benefits, shall provide a fifteen percent (15%) rate increase option
7 for personal care services reimbursed under the following Medicaid Clinical Coverage Policies:

- 8 (1) Clinical Coverage Policy 3L: State Plan Personal Care Services (PCS).
9 (2) Clinical Coverage Policy 3K-1: Community Alternatives Program for
10 Children (CAP-C).
11 (3) Clinical Coverage Policy 3K-2: Community Alternatives Program for
12 Disabled Adults (CAP/DA).

13 To be eligible for the fifteen percent (15%) rate increase option under this section for
14 covered services it provides, a provider shall attest and provide verification that the rate increase
15 will be used to increase the wages of all direct care professionals it employs to an hourly wage
16 of no less than fifteen dollars (\$15.00) and agree to, at a minimum, provide any data required to
17 be collected under this act. The hourly wage of no less than fifteen dollars (\$15.00) required by
18 this act shall include all travel time and hours worked.

19 For the purposes of this act, the term "direct care professional" shall mean an
20 individual who provides direct, hands-on assistance with activities of daily living, such as
21 dressing, eating, personal hygiene, mobility, and toileting, to North Carolina Medicaid program
22 beneficiaries who are older adults or individuals with disabilities living in a variety of settings,
23 including home and community-based settings and skilled nursing facilities. Direct care
24 professionals may go by a variety of professional titles, including home health aide, nursing
25 assistant, personal care attendant or assistant, caregiver, and direct support worker.

26 **SECTION 1.(b)** LME/MCOs and PHP Capitation Rate Adjustment. – Upon
27 implementation of the rate increase option under this section, the Department of Health and
28 Human Services, Division of Health Benefits, shall adjust the per member per month (PMPM)
29 capitation amount paid to local management entity/managed care organizations (LME/MCOs)
30 operating capitated contracts for mental health, intellectual and development disabilities, and
31 substance abuse services and to prepaid health plans (PHPs), as defined under G.S. 108D-1.
32 These capitation rate adjustments shall include amounts sufficient to implement this rate increase
33 option for providers paid by the LME/MCO or PHP. LME/MCOs and PHPs shall require a
34 provider electing this option to attest and provide verification that the rate increase will be used
35 to increase the wages of all direct care professionals it employs to an hourly wage of no less than



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1 fifteen dollars (\$15.00) and agree to, at a minimum, provide any data required to be collected
2 under this act.

3 **SECTION 1.(c)** Rate Increase Option Effective Date. – The fifteen percent (15%)
4 rate increase option and the capitation rate adjustments required under this section shall be
5 effective only upon both of the following conditions:

- 6 (1) Termination of the rate increases totaling fifteen percent (15%) total for
7 providers of personal care services implemented as a result of the nationwide
8 public health emergency as a result of the 2019 novel coronavirus.
- 9 (2) Approval by the Centers for Medicare and Medicaid Services (CMS) of the
10 rate increase.

11 The rate increase option shall be implemented on the date allowed by CMS and not
12 before.

13 **SECTION 1.(d)** Appropriations. – Effective July 1, 2021, there is appropriated from
14 the General Fund to the Department of Health and Human Services, Division of Health Benefits
15 (DHB), the sum of nine million three hundred thousand dollars (\$9,300,000) in recurring funds
16 for the 2021-2022 fiscal year and the sum of twenty-one million eight hundred fifty thousand
17 dollars (\$21,850,000) in recurring funds for the 2022-2023 fiscal year to implement the rate
18 increase option under this section. These funds shall provide a State match for twenty-seven
19 million four hundred thousand dollars (\$27,400,000) in recurring federal funds for the 2021-2022
20 fiscal year and fifty-seven million three hundred thousand dollars (\$57,300,000) in recurring
21 federal funds for the 2022-2023 fiscal year, and those federal funds are appropriated to DHB to
22 pay for costs associated with the rate increase option under this section.

23 **SECTION 2.** Annual Reporting Tool. – Within 60 calendar days of the receipt of the
24 rate increase option under Section 1 of this act and on an annual schedule set by the Department
25 of Health and Human Services, Division of Health Benefits (DHB), thereafter, each provider
26 receiving the rate increase option shall track and report to DHB how that provider used the rate
27 increase to increase the wages of all direct care professionals it employs to an hourly wage of no
28 less than fifteen dollars (\$15.00). DHB shall develop a reporting tool for this purpose. The data
29 collected by the reporting tool shall enable DHB to evaluate the status of the direct care
30 professional workforce in the State. At a minimum, a provider receiving the rate increase option
31 under Section 1 of this act shall be required to provide the following information to DHB:

- 32 (1) The number of full-time and part-time direct care professionals employed by
33 the provider.
- 34 (2) Measures of direct care professional workforce stability, such as vacancy and
35 turnover rates.
- 36 (3) Direct care professional worker qualifications, including training and
37 certification.
- 38 (4) Compensation of direct care professionals by the provider, including wages
39 and benefits, on a per-worker basis.

40 Each provider receiving the rate increase option under Section 1 of this act shall
41 maintain all books, documents, records, and other evidence required to support the provider's use
42 of the rate increase to increase the wages of its direct care professionals. The provider shall make
43 this information and supporting materials available to DHB, or its designee, at all reasonable
44 times. DHB shall conduct any audits as necessary to verify the accuracy of information reported,
45 and any audit conducted by DHB shall be at the expense of the provider.

46 **SECTION 3.(a)** Notification to Direct Care Professionals. – Any provider electing
47 the rate increase option under Section 1 of this act shall provide notice to each direct care
48 professional employed by that provider of the effective date of the direct care professional's wage
49 increase and the specific wage to be paid to that employee as of that effective date.

50 **SECTION 3.(b)** Investigations of Reports by Direct Care Professionals. – The
51 Department of Health and Human Services, Division of Health Benefits (DHB), shall establish a

1 mechanism by which a direct care professional may report an employer that has failed to pay the
2 wages required under this act. DHB shall thoroughly investigate all reports. Investigation by
3 DHB may include audits of the information required to be provided to DHB under Section 2 of
4 this act at the expense of the provider.

5 **SECTION 4.** Disqualification for Rate Increase/Recoupment of Funds. – If the
6 Department of Health and Human Services, Division of Health Benefits (DHB), has reason to
7 believe that a provider receiving the rate increase option under Section 1 of this act has not
8 increased the wages of the direct care professionals that it employs to an hourly wage of no less
9 than fifteen dollars (\$15.00), then DHB may, at any time, request information from the provider
10 that indicates how that provider has used the rate increase to increase the wages of its direct care
11 professionals. In addition to other allowable reasons for recoupment of funds, DHB may recoup
12 part or all of the funds related to the rate increase option received by a provider if DHB
13 determines either of the following:

- 14 (1) The provider did not use the funding from the rate increase to increase the
15 wages of all direct care professionals it employs to an hourly wage of no less
16 than fifteen dollars (\$15.00).
- 17 (2) The provider failed to track and report the use of the funding, as required by
18 Section 2 of this act.

19 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
20 law.