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

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

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

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

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

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

The General Assembly of North Carolina enacts:

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

1. The adjustments shall be consistent with the North Carolina Medicaid State Plan requirements to provide for actuarially sound rates sufficient to operate and provide safe and effective services.
(2) DHB shall validate the actual amounts necessary to adjust the relevant portion of the LME/MCO PMPM capitation payment to align wages paid to direct support personnel with current wages paid to State employees in State-owned developmental centers.

(3) The adjustments shall be considered directed payments made to LME/MCOs under 42 C.F.R. § 438.6, in order to assure that the increased amounts are used for wage increases.

(4) Providers receiving any increase in funds from LME/MCOs to be used for wage increases shall attest and provide verification that those increased funds are being used for the purpose of increasing wages paid to direct support personnel and employees who support direct support personnel. LME/MCOs may require verifiable methods of accounting, such as payroll-based journals.

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

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

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

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

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

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

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

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