# **SENATE . . . . . . . . . . . . . . . . No. 83**

## The Commonwealth of Massachusetts

PRESENTED BY:

#### Barry R. Finegold

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to rates for workers providing supports and services for individuals with disabilities.

#### PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Barry R. Finegold	Second Essex and Middlesex	
Sean Garballey	23rd Middlesex	1/23/2023
Jack Patrick Lewis	7th Middlesex	1/26/2023
Joanne M. Comerford	Hampshire, Franklin and Worcester	1/26/2023
Michael D. Brady	Second Plymouth and Norfolk	1/26/2023
Mathew J. Muratore	1st Plymouth	1/26/2023
Robyn K. Kennedy	First Worcester	1/26/2023
Patrick M. O'Connor	First Plymouth and Norfolk	1/30/2023
Susannah M. Whipps	2nd Franklin	1/30/2023
Angelo J. Puppolo, Jr.	12th Hampden	2/3/2023
Michael O. Moore	Second Worcester	2/3/2023
John C. Velis	Hampden and Hampshire	2/7/2023
Thomas M. Stanley	9th Middlesex	2/7/2023
Jason M. Lewis	Fifth Middlesex	2/9/2023
James B. Eldridge	Middlesex and Worcester	2/13/2023
Adam Gomez	Hampden	2/22/2023
Bradley H. Jones, Jr.	20th Middlesex	2/24/2023

Danillo A. Sena	37th Middlesex	2/24/2023
Patricia D. Jehlen	Second Middlesex	3/7/2023
John F. Keenan	Norfolk and Plymouth	3/13/2023
Brendan P. Crighton	Third Essex	3/13/2023
Susan L. Moran	Plymouth and Barnstable	4/10/2023
Steven George Xiarhos	5th Barnstable	4/10/2023
Julian Cyr	Cape and Islands	4/18/2023
Walter F. Timilty	Norfolk, Plymouth and Bristol	4/18/2023
David F. DeCoste	5th Plymouth	5/8/2023
Vanna Howard	17th Middlesex	5/9/2023
Rebecca L. Rausch	Norfolk, Worcester and Middlesex	7/13/2023
David T. Vieira	3rd Barnstable	10/1/2023
Jacob R. Oliveira	Hampden, Hampshire and Worcester	1/11/2024

## **SENATE . . . . . . . . . . . . . . . . No. 83**

By Mr. Finegold, a petition (accompanied by bill, Senate, No. 83) of Barry R. Finegold, Sean Garballey, Jack Patrick Lewis, Joanne M. Comerford and other members of the General Court for legislation relative to rates of payment for workers providing support and services for individuals with disabilities for the Department of Developmental Services. Children, Families and Persons with Disabilities.

## The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court (2023-2024)

An Act relative to rates for workers providing supports and services for individuals with disabilities.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- SECTION 1. Chapter 7 of the General Laws, as appearing in the 2022 Official Edition, is
- 2 hereby amended by inserting after section 22O the following section:-
- 3 Section 22P. Department of Developmental Services Rates of Payment
- 4 (a) As used in this section the following words shall, unless the context clearly requires
- 5 otherwise, have the following meanings:
- 6 "Department", the department of developmental services.
- 7 "Direct care staff or direct support professional", a worker classified by the commissioner
- 8 of the department, secretary of the executive office of health and human services, assistant
- 9 secretary of the executive office of health and human services or director of MassHealth who:

10 (i) meets any one or more of the following criteria: 11 (1) supports one or more individuals in a service setting; or 12 (2) does not have front line supervisor or management responsibilities; and 13 (ii) works at entry level and with minimal experience, employed in jobs which perform 14 duties in disability systems of care including, but not limited to: (1) community-based day 15 supports; (2) employment and residential support; (3) family support; (4) shared living; (5) 16 supported living; (6) self-direction; (7) MassHealth day habilitation; or (8) any other purchase of 17 services program or service at the department not limited to the titles of this definition. 18 "Other direct care staff or direct support professional", a worker classified by the 19 commissioner of the department, secretary of the executive office of health and human services, 20 assistant secretary of the executive office of health and human services or director of MassHealth 21 who: 22 (i) meets any one or more of the following criteria: 23 (1) supports one or more individuals in a service setting or supervises staff; 24 (2) has front line supervisor or management responsibilities; or 25 (3) has relevant experience or credentials such as a degree from an institution of higher 26 education or certifications which reflect advanced training; and 27 (ii) is employed in a job which performs duties in disability systems of care including, but

not limited to: (1) community-based day supports; (2) employment and residential support; (3)

family support; (4) shared living; (5) supported living; (6) self-direction; (7) MassHealth day

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habilitation; or (8) any other purchase of services program or service at the department not limited to the titles of this definition.

- (b) When establishing rates of payment through chapter 257 of the acts of 2008 for department programs and contracts, the secretary of the executive office of health and human services shall require that:
- (i) the salary allowance for a direct care staff or direct support professional shall be consistent with the bureau of labor statistics at a minimum of the 75th percentile of positions in the commonwealth which have job codes of similar responsibilities;
- (ii) the salary increases determined for front-line supervisors, directors, clinicians, caseworkers, employment specialists, case managers, and other direct care staff or direct support professionals shall increase in proportion with the increases described in clause (i) of this subsection;
- (iii) said salary increases shall not be incorporated for those in the following positions:

  (1) chief executive officer; (2) chief financial officer; (3) comptroller; (4) chief operating officer; or (5) related executive staff;
- (iv) the formula for determining the reimbursement in calculating the employer's portion of fringe benefits and payroll taxes including, but not limited to, those pursuant to the federal Insurance Contributions Act as defined in 26 U.S.C. section 21, Medicare, workers' compensation, employer-provided health insurance, unemployment insurance, retirement contribution, or paid family medical leave pursuant to chapter 175M shall be benchmarked to changes in the same costs in the health or education sector, as applicable; provided, however, that said allowance shall be separate from an allocation dedicated to costs associated with

- employer mandates for services promulgated by the commonwealth, which include, but are not limited to, employee fingerprinting and required registries.
- SECTION 2. Section 22N of chapter 7 of the General Laws, as so appearing, is hereby amended in the last paragraph by inserting after the second appearance of the words "governmental units" the following:-
- ; a provision requiring that in contracts between providers and the commonwealth, the
   payment of rates pursuant to section 13C of chapter 118 shall not result in the reduction,
   deferment or non-payment of any other costs associated with the performance of said contracts
- SECTION 3. Section 13D of chapter 118E of the General Laws, as so appearing, is hereby amended by inserting at the end of the first paragraph the following words:-
  - ; provided, further, that ratemaking duties with regard to reimbursement rates to day habilitation programs shall be conducted pursuant to section 13D½ of this chapter.
  - SECTION 4. Chapter 118E of the General Laws, as so appearing, is hereby amended by inserting after section 13D the following section:-
- Section 13D½. MassHealth Rates of Payment for Day Habilitation Programs

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- (a) As used in this section the following words shall, unless the context clearly requires otherwise, have the same meanings as such terms are defined in section 22P of chapter 7 of the General Laws: (i) "direct care staff or direct support professional"; and (ii) "other direct care staff or direct support professional".
- (b) When establishing rates of payment for day habilitation training, care, support, habilitative or rehabilitative care under MassHealth Long Term Supports and Services

reimbursable under Title XIX of the 42 U.S.C. section 1396–1, as amended from time to time, which provide supports and services to individuals, the secretary of the executive office of health and human services shall promulgate regulations to require that:

- (i) the salary allowance for a direct care staff or direct support professional shall be consistent with the bureau of labor statistics at a minimum of the 75th percentile of positions in the commonwealth which have job codes of similar responsibilities;
- (ii) the salary increases determined for front-line supervisors, directors, clinicians, case managers, and other direct care staff or direct support professionals shall increase in proportion with the increases aforementioned in clause (i) of this subsection;
- (iii) the aforementioned salary increases shall not be incorporated for those in the following positions: (1) chief executive officer; (2) chief financial officer; (3) comptroller; (4) chief operating officer; or (5) related executive staff;
- (iv) the formula for determining the reimbursement of calculating the employer's portion of fringe benefits and payroll taxes including, but not limited to, those pursuant to the federal Insurance Contributions Act as defined in 26 U.S.C. section 21, Medicare, workers' compensation, employer-provided health insurance, unemployment insurance, retirement contribution, and paid family medical leave pursuant to chapter 175M shall be benchmarked to changes in the same costs in the health or education sector, as applicable; provided, however, that said allowance shall be separate from an allocation dedicated to costs associated with employer mandates for services promulgated by the commonwealth, which include, but are not limited to, employee fingerprinting and required registries.

SECTION 5. Notwithstanding the provisions of any general or special law to the contrary, compliance with the provisions set forth in this act shall not result in a reduction, deferment or non-payment of any other costs associated with social service programs or long-term services and supports programs in the Commonwealth.

SECTION 6. The executive office of health and human services shall condition the expenditure of appropriation upon assurances that the funds shall be used solely for the purposes of adjustments as stated in sections 2(b) and 4(b) of this act.

SECTION 7. Sections 1 through 4 shall take effect 12 months after the passage of this act.