

HOUSE No. 171

The Commonwealth of Massachusetts

PRESENTED BY:

Sean Garballey and Simon Cataldo

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:	DATE ADDED:
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>1/20/2023</i>
<i>Simon Cataldo</i>	<i>14th Middlesex</i>	<i>1/20/2023</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>1/26/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/26/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>1/26/2023</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Norfolk</i>	<i>1/26/2023</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>1/26/2023</i>
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	<i>1/26/2023</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>1/26/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>1/26/2023</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>	<i>1/26/2023</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>1/26/2023</i>
<i>Jessica Ann Giannino</i>	<i>16th Suffolk</i>	<i>1/27/2023</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>1/27/2023</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/27/2023</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>1/30/2023</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/30/2023</i>

<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>1/31/2023</i>
<i>Ryan M. Hamilton</i>	<i>15th Essex</i>	<i>2/2/2023</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	<i>2/2/2023</i>
<i>Thomas P. Walsh</i>	<i>12th Essex</i>	<i>2/2/2023</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>1/31/2023</i>
<i>Steven Owens</i>	<i>29th Middlesex</i>	<i>2/2/2023</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>2/2/2023</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/2/2023</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>2/2/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/2/2023</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>	<i>2/2/2023</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>2/3/2023</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>	<i>2/6/2023</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>	<i>2/6/2023</i>
<i>James C. Arena-DeRosa</i>	<i>8th Middlesex</i>	<i>2/6/2023</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>2/7/2023</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/7/2023</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	<i>2/8/2023</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>2/8/2023</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>	<i>2/8/2023</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/8/2023</i>
<i>Tricia Farley-Bouvier</i>	<i>2nd Berkshire</i>	<i>2/8/2023</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>	<i>2/10/2023</i>
<i>Rodney M. Elliott</i>	<i>16th Middlesex</i>	<i>2/10/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/10/2023</i>
<i>Margaret R. Scarsdale</i>	<i>1st Middlesex</i>	<i>2/13/2023</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>2/13/2023</i>
<i>Rob Consalvo</i>	<i>14th Suffolk</i>	<i>2/14/2023</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>2/15/2023</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>	<i>2/15/2023</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>2/17/2023</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>	<i>2/22/2023</i>
<i>Kate Lipper-Garabedian</i>	<i>32nd Middlesex</i>	<i>2/23/2023</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>2/23/2023</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>2/23/2023</i>
<i>Christopher Richard Flanagan</i>	<i>1st Barnstable</i>	<i>2/27/2023</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>	<i>2/28/2023</i>
<i>Michael P. Kushmerek</i>	<i>3rd Worcester</i>	<i>2/28/2023</i>
<i>Richard M. Haggerty</i>	<i>30th Middlesex</i>	<i>3/6/2023</i>

<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>3/8/2023</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>3/8/2023</i>

HOUSE No. 171

By Representatives Garballey of Arlington and Cataldo of Concord, a petition (accompanied by bill, House, No. 171) of Sean Garballey, Simon Cataldo and others relative to Department of Developmental Services rates of payment for workers providing support and services for individuals with disabilities. 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:

1 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
8 commissioner of the department, secretary of the executive office of health and human services,
9 assistant secretary of the executive office of health and human services or director of MassHealth
10 who:

11 (i) meets any one or more of the following criteria:

12 (1) supports one or more individuals in a service setting; or

13 (2) does not have front line supervisor or management responsibilities; and

14 (ii) works at entry level and with minimal experience, employed in jobs which perform

15 duties in disability systems of care including, but not limited to: (1) community-based day

16 supports; (2) employment and residential support; (3) family support; (4) shared living; (5)

17 supported living; (6) self-direction; (7) MassHealth day habilitation; or (8) any other purchase of

18 services program or service at the department not limited to the titles of this definition.

19 “Other Direct Care Staff or Direct Support Professional” a worker classified by the

20 commissioner of the department, secretary of the executive office of health and human services,

21 assistant secretary of the executive office of health and human services or director of MassHealth

22 who:

23 (i) meets any one or more of the following criteria:

24 (1) supports one or more individuals in a service setting or supervises staff;

25 (2) may have front line supervisor or management responsibilities; or

26 (3) has relevant experience or credentials such as a degree from an institution of higher

27 education or certifications which reflect advanced training; and

28 (ii) is employed in a job which performs duties in disability systems of care including, but

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

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

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

33 (b) When establishing rates of payment through chapter 257 of the acts of 2008 for
34 department programs and contracts, the secretary of the executive office of health and human
35 services shall require that:

36 (i) the salary allowance for a direct care staff or direct support professional shall be
37 consistent with the bureau of labor statistics at a minimum of the 75th percentile of positions in
38 the commonwealth which have job codes of similar responsibilities;

39 (ii) the salary increases determined for front-line supervisors, directors, clinicians,
40 caseworkers, employment specialists, case managers, and other direct care staff or direct support
41 professionals shall increase in proportion with the increases described in clause (i) of this
42 subsection;

43 (iii) said salary increases shall not be incorporated for those in positions of chief
44 executive officer, chief financial officer, comptroller, chief operating officer or related executive
45 staff;

46 (iv) the formula for determining the reimbursement in calculating the employer's portion
47 of fringe benefits and payroll taxes including, but not limited to those pursuant to the federal
48 Insurance Contributions Act as defined in 26 U.S.C. 21, Medicare, workers' compensation,
49 employer-provided health insurance, unemployment insurance, retirement contribution, or paid
50 family medical leave pursuant to chapter 175M will be benchmarked to changes in the same
51 costs in the health or education sector, as applicable; provided that said allowance shall be
52 separate from an allocation dedicated to costs associated with employer mandates for services

53 promulgated by the commonwealth, which include, but are not limited to, employee
54 fingerprinting and required registries.

55 SECTION 2. Section 22N of chapter 7 of the General Laws, as so appearing, is hereby
56 amended by inserting after the second appearance of the words “governmental units;” in the last
57 paragraph the following:-

58 a provision requiring that in contracts between providers and the commonwealth, the
59 payment of rates pursuant to section 13C of chapter 118 shall not result in the reduction,
60 deferment or non-payment of any other costs associated with the performance of said contracts;

61 SECTION 3. Section 13D of chapter 118E of the General Laws, as so appearing, is
62 hereby amended by inserting at the end of the first paragraph the following words:-

63 provided, further, that ratemaking duties with regard to reimbursement rates to day
64 habilitation programs shall be conducted pursuant to section 13D1/2 of this chapter.

65 SECTION 4. Chapter 118E of the General Laws, as so appearing, is hereby amended by
66 inserting after section 13D the following section:-

67 Section 13D1/2. MassHealth Rates of Payment for Day Habilitation Programs

68 (a) As used in this section the following words shall, unless the context clearly requires
69 otherwise, have the same meanings as such terms are defined in section 22P of chapter 7 of the
70 General Laws: (i) “direct care staff or direct support professional”; “other direct care staff or
71 direct support professional”.

72 (b) When establishing rates of payment for day habilitation training, care, support,
73 habilitative or rehabilitative care under MassHealth Long Term Supports and Services

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

77 (i) the salary allowance for a direct care staff or direct support professional shall be
78 consistent with the bureau of labor statistics at a minimum of the 75th percentile of positions in
79 the commonwealth which have job codes of similar responsibilities;

80 (ii) the salary increases determined for front-line supervisors, directors, clinicians, and
81 other direct care staff or direct support professionals shall increase in proportion with the
82 increases aforementioned in clause (i) of this subsection;

83 (iii) the aforementioned salary increases shall not be incorporated for those in positions of
84 chief executive officer, chief financial officer, comptroller, chief operating officer or related
85 executive staff;

86 (iv) the formula for determining the reimbursement of calculating the employer’s portion
87 of fringe benefits and payroll taxes including, but not limited to those pursuant to the federal
88 Insurance Contributions Act as defined in 26 U.S.C. 21, Medicare, workers’ compensation,
89 employer-provided health insurance, unemployment insurance, retirement contribution, and paid
90 family medical leave pursuant to chapter 175M will be benchmarked to changes in the same
91 costs in the health or education sector, as applicable; provided that said allowance shall be
92 separate from an allocation dedicated to costs associated with employer mandates for services
93 promulgated by the commonwealth, which include, but are not limited to, employee
94 fingerprinting and required registries.

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

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

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