

1 AN ACT relating to Medicaid reimbursement rates for certain Supports for  
2 Community Living and Michelle P. waiver services.

3 WHEREAS, the direct support professional workforce enables more than 15,000  
4 Kentuckians with intellectual or developmental disabilities (IDD) to live successfully in  
5 community-based settings across the Commonwealth; and

6 WHEREAS, Kentucky's IDD support system is in crisis with a nearly 50% turnover  
7 rate because direct support professional wages are not proportional to the responsibility  
8 and skills required to meet the needs of individuals with IDD; and

9 WHEREAS, the IDD support system crisis will continue to worsen as it becomes  
10 increasingly difficult to recruit and retain staff when retail and food service  
11 establishments regularly offer higher wages for far less responsibility; and

12 WHEREAS, direct support professionals' responsibilities are not commensurate  
13 with minimum wage pay; and

14 WHEREAS, it is anticipated that the federal government may raise the minimum  
15 wage to \$15 per hour; and

16 WHEREAS, providers of services for individuals with IDD are unable to increase  
17 wages for direct support professionals as such costs cannot be passed through and  
18 recovered in any way because IDD services are solely funded by Medicaid dollars;

19 NOW, THEREFORE,

20 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

21 ➔Section 1. The Cabinet for Health and Family Services is hereby directed to  
22 implement an increase in Medicaid reimbursement rates for certain Supports for  
23 Community Living and Michelle P. waiver services as follows:

24 (1) (a) Effective July 1, 2022, the cabinet shall institute a one-time increase in the  
25 Medicaid reimbursement rate for the following non-participant directed  
26 services provided under the Supports for Community Living and Michelle P.  
27 1915(c) Home and Community-Based Services waivers:

- 1           1.    Attendant care;
  - 2           2.    Day training;
  - 3           3.    Homemaker services;
  - 4           4.    Personal assistance;
  - 5           5.    Personal care;
  - 6           6.    Residential Level 1 care;
  - 7           7.    Residential Level 2 care;
  - 8           8.    Technology Assisted Residential care; and
  - 9           9.    Respite care.
- 10       (b) The services described in paragraph (a) of this subsection shall be eligible for
- 11       the increased reimbursement rate if the service is delivered:
- 12       1.    To an individual who receives traditional, non-participant directed
  - 13       services through the Supports for Community Living or Michelle P.
  - 14       1915(c) Home and Community-Based Services waiver; and
  - 15       2.    By a direct support professional or direct care staff, as defined by the
  - 16       cabinet.
- 17       (c) The reimbursement rate for services described in paragraphs (a) and (b) of this
- 18       subsection shall be increased by an amount equal to the reimbursement rate in
- 19       effect on January 1, 2020, multiplied by 10%;
- 20   (2) An authorized Medicaid-participating provider who receives the increased
- 21   reimbursement rate described in subsection (1) of this section:
- 22   (a) Shall use at least 75% of the amount by which the reimbursement rate was
  - 23   increased to increase wages paid to direct support professionals or direct
  - 24   support staff who:
- 25       1.    Are employed or contracted by the authorized Medicaid-participating
  - 26       provider to provide services in Kentucky; and
  - 27       2.    Provide services described in subsection (1) of this section;

- 1 (b) Shall document use of the reimbursement rate increase to increase wages paid  
2 to direct support professionals and direct care staff using a software program  
3 or tool developed jointly by the Department for Medicaid Services and  
4 Supports for Community Living and Michelle P. waiver service providers.  
5 The Department for Medicaid Services and providers are strongly encouraged  
6 to consider tools previously developed by other states when developing this  
7 reporting tool; and
- 8 (c) May use the remaining 25% of the amount by which the reimbursement rate  
9 was increased for other employer-related costs of providing direct care  
10 services, including but not limited to:
- 11 1. Administrative expenses;
  - 12 2. Payroll taxes;
  - 13 3. Employee benefits; and
  - 14 4. Paid time for non-direct services such as paid time off and training;
- 15 (3) If a Medicaid-participating provider who receives the increased reimbursement rate  
16 described in subsection (1) of this section does not use the increase as permitted by  
17 subsection (2) of this section, the Department for Medicaid Services shall recoup  
18 funds from the provider as follows:
- 19 (a) If the provider used no portion of the increase to increase direct support  
20 professional or direct care staff wages, the Department for Medicaid Services  
21 shall recoup an amount equal to 100% of the reimbursement rate increase;
  - 22 (b) If the provider used some portion of the increase but less than 75% of the  
23 increase to increase direct support professional or direct care staff wages, the  
24 Department for Medicaid Services shall recoup an amount equal to 75% of the  
25 reimbursement rate increase minus the amount that was used to increase direct  
26 support professional or direct care staff wages;
- 27 (4) By October 1, 2024, the Cabinet for Health and Family Services shall provide the

1 Legislative Research Commission with an analysis of the effect of the  
2 reimbursement rate increase on the wages of direct support professionals or direct  
3 support staff. This analysis shall include the statewide average wage for direct  
4 support professionals or direct support staff on July 1, 2024;

5 (5) The Cabinet for Health and Family Services may promulgate administrative  
6 regulations necessary to carry out this section;

7 (6) The provisions of this section shall not be construed as creating an employment  
8 agreement of any kind; and

9 (7) As used in this section:

10 (a) "Participant directed services" means services which are planned and  
11 purchased under the direction and control of a Medicaid participant or the  
12 participant's authorized representative; and

13 (b) "Wages" means the total compensation, less overtime pay and shift  
14 differential, for direct support professionals or direct support staff who  
15 provided services described in subsection (1) of this section as reported on the  
16 employer's payroll records.

17 ➔Section 2. The provisions of Section 1 of this Act shall expire on December 31,  
18 2024.

19 ➔Section 3. If the Cabinet for Health and Family Services or the Department for  
20 Medicaid Services determines that a waiver or any other authorization from a federal  
21 agency is necessary prior to the implementation of any provision of Section 1 of this Act,  
22 the cabinet or department shall, within 90 days after the effective date of this Act, request  
23 the waiver or authorization and shall only delay full implementation of those provisions  
24 for which a waiver or authorization was deemed necessary until the waiver or  
25 authorization is granted.