

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

Danillo A. Sena

37th Middlesex

2/24/2023

Patricia D. Jehlen

Second Middlesex

3/7/2023

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:

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 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

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

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

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

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

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

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

42 (iii) said salary increases shall not be incorporated for those in the following positions:
43 (1) chief executive officer; (2) chief financial officer; (3) comptroller; (4) chief operating officer;
44 or (5) related executive staff;

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

52 employer mandates for services promulgated by the commonwealth, which include, but are not
53 limited to, employee fingerprinting and required registries.

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

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

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

62 ; provided, further, that ratemaking duties with regard to reimbursement rates to day
63 habilitation programs shall be conducted pursuant to section 13D½ of this chapter.

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

66 Section 13D½. MassHealth Rates of Payment for Day Habilitation Programs

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

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

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

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

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

82 (iii) the aforementioned salary increases shall not be incorporated for those in the
83 following positions: (1) chief executive officer; (2) chief financial officer; (3) comptroller; (4)
84 chief operating officer; or (5) related executive staff;

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

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

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

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