

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-G, sub-§14-I is enacted to read:

**14-I.**

<u>Health Care</u>	<u>Universal Home Care Trust Fund Board</u>	<u>Expenses Only</u>	<u>22 MRSA §7284</u>
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Sec. 2. 5 MRSA §12004-I, sub-§30-B is enacted to read:

**30-B.**

<u>Health Care</u>	<u>Universal Home Care Trust Fund Advisory Committee</u>	<u>Not Authorized</u>	<u>22 MRSA §7285</u>
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Sec. 3. 22 MRSA sub-T. 4, Pt. 4 is enacted to read:

**PART 4**

**HOME CARE SERVICES**

**CHAPTER 1611**

**UNIVERSAL HOME CARE**

**§7281. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Advisory committee.** "Advisory committee" means the Universal Home Care Trust Fund Advisory Committee described in section 7285.

**2. Board.** "Board" means the Universal Home Care Trust Fund Board described in section 7284.

**3. Constituency.** "Constituency" means persons within one of the following categories:

A. Personal care agencies as defined in section 1717, subsection 1, paragraph C;

B. Individual providers and direct care service providers employed by in-home and community support services agencies; and

C. Persons receiving in-home and community support services through the program, or their family members.

**4. Covered program.** "Covered program" means any program funded entirely or in part by the board pursuant to this chapter.

**5. Eligible person.** "Eligible person" means a person determined to be eligible pursuant to section 7286.

**6. Family caregiver.** "Family caregiver" means a person who provides care-related services to assist a family member who is permanently or temporarily incapable of fully caring for the family member's self. Care-related services include but are not limited to coordinating care-related appointments and transportation, scheduling and coordinating additional care with other workers or agencies, providing financial or emotional support and supporting the physical needs of an individual necessary for day-to-day functioning such as bathing, dressing, cooking, feeding, medication management, wound care, transportation, shopping and domestic work.

**7. Family member.** "Family member" means an individual with any of the following relationships to the eligible person:

A. Spouse or parent of the spouse;

B. A child or spouse of the child;

C. A parent or spouse of the parent;

D. A sibling or spouse of the sibling;

E. A grandparent or spouse of the grandparent;

F. A grandchild or spouse of the grandchild;

G. A domestic partner or parent of the domestic partner, including the domestic partner of any individual in paragraphs A to F; or

H. Any other individual related to the eligible person by blood or whose close association with the eligible person is the equivalent of an acknowledged family relationship.

For purposes of this chapter, "child" includes a biological child, an adopted child, a stepchild, a foster child and a child to whom the eligible person stands in loco parentis.

For purposes of this chapter, "parent" includes a biological parent, foster parent, stepparent, adoptive parent or legal guardian of the eligible person, and an individual who stood in loco parentis when the eligible person was a minor.

**8. Fund.** "Fund" means the Universal Home Care Trust Fund established under section 7283.

**9. Individual provider.** "Individual provider" means any individual selected by and working under the direction of an eligible person in a covered program, or an eligible person's representative, to provide in-home and community support services to the eligible person. "Individual provider" does not include a person providing care by virtue of that person's employment or contract with a provider agency.

**10. In-home and community support services.** "In-home and community support services" means health care and social services and other assistance required to enable adults with long-term care needs to remain in their places of residence. These services include, but are not limited to, self-directed care services; medical and diagnostic

services; professional nursing; physical, occupational and speech therapy; dietary and nutrition services; home health aide services; personal care assistance services; companion and attendant services; home repair, chore and homemaker services; respite care; hospice care; counseling services; transportation; small rent subsidies; various devices that lessen the effects of disabilities; and other appropriate and necessary social services.

**11. Person with a disability.** "Person with a disability" means a person with a physical or mental disability as defined in Title 5, section 4553-A or with a disability as defined in 42 United States Code, Section 12102.

**12. Senior.** "Senior" means an individual 65 years of age or older.

**13. Universal Home Care Program.** "Universal Home Care Program" or "program" means the program established under section 7282.

**§7282. Program established**

The Universal Home Care Program is established to provide in-home and community support services to individuals and families determined to be eligible under this chapter at no cost to those individuals and families. The board oversees all funding for services provided pursuant to the program.

Due to the age of the population of this State and the growing utilization of in-home and community support services, the need for services may exceed the board's ability to provide universal access to full benefits, in which case the board shall place limits on the amount of services available to each eligible person through the program.

**§7283. Universal Home Care Trust Fund established**

The Universal Home Care Trust Fund is established as a nonlapsing fund managed by the board to support the program. The fund may receive any revenue appropriated or allocated to the fund, including taxes collected under Title 36, sections 5002, 5204-C and 5204-D, and receives all funds deposited in the fund from any other source. Funds in the fund may be invested in the same manner as permitted for funds held in the State Treasury.

**§7284. Universal Home Care Trust Fund Board**

The Universal Home Care Trust Fund Board, established in Title 5, section 12004-G, subsection 14-I, oversees and manages the fund and its use under the program in accordance with this chapter. The board may provide services and incur other costs only to the extent that funding is available in the fund. The board also collects and disseminates information to the Legislature, the Governor and the public about the needs of families in the State in order to encourage policy reform.

**1. Program design.** The board shall design and deliver the program to provide eligible persons with in-home and community support services. The board shall design the program to reduce the amount of unmet need and to supplement and not supplant existing programs.

The board shall maximize access to in-home and community support services using the funds available pursuant to this chapter. The program is not required to cover all possible in-home and community support services for all eligible persons. The board is prohibited from providing or offering services that would incur costs in excess of available funds.

If demand for services for eligible persons exceeds available funds, the board shall curtail services. When curtailing services, the board may provide varying levels of service to eligible persons depending on an assessment of their needs. The board may allocate an amount of funding for each assessment level and restrict the total amount of services provided to eligible persons in that assessment level to the funding amount allocated to that level. The assessment levels must be based on the extent of interference with activities of daily living, functional abilities and need for health and social services of the eligible persons.

**2. Powers and duties.** The board:

A. Shall design and deliver to the extent that funds are available a home care program that funds both formal care and informal family care and shall use the fund to provide access to in-home and community support services for eligible persons by December 31, 2021;

B. Shall ensure improvements in the wages, benefits and working conditions of persons providing in-home and community support services;

C. Shall create within the program a system by which funds may be used to provide a stipend to a family caregiver providing care to an eligible family member;

D. Shall set mandatory standards for quality and safety for in-home and community support services delivered with funding from the fund, without adversely affecting communities of color or low-wage earners;

E. Shall determine how to use the fund to fulfill the requirements of this chapter, including by establishing a system for determining eligibility under section 7286, and how to manage the fund to ensure its long-term sustainability, including by creating a ramp-up period as described in section 7286 ending no later than December 31, 2021 during which services are made available to eligible persons to the greatest extent possible without curtailing enrollment;

F. Shall set reimbursement rates for services eligible for reimbursement under the program in a manner that maximizes access to those services, supports workforce development and ensures service quality;

G. May manage the program's benefits to ensure the financial health of the fund, but may not restrict eligibility for the program as set forth in section 7286;

H. May create advisory committees, in addition to the advisory committee under section 7285, to advise the board on the program and fund;

I. Shall collect, analyze and disseminate information related to the program and the broader needs of families in the State, as applicable, including measuring and studying disparities in access to relevant services by race, income, disability and gender;

J. Shall, in the event the board identifies disparities in access to relevant services by race, income or gender, manage the program so that those disparities are reduced or eliminated;

K. Shall create a process for assessing the needs for in-home and community support services for individuals who need those services who are residing in their own homes or in other private homes in the community and a process for determining the extent of services eligible persons may receive;

L. May partner with the department to provide supplementary funding to existing state programs, including long-term care programs other than in-home and community support services, to expand eligibility, increase payments to providers or raise quality standards consistent with other responsibilities, and to maintain a stable, high-quality care workforce;

M. Shall create and adopt its own governance rules and develop and approve its own budget for the program and its administration and may expend no more than 5% of the fund on administrative costs;

N. May fund initiatives that contribute to the effective use of the fund including workforce development, training and quality improvement programs and certifications for direct care workers;

O. Shall conduct outreach activities to ensure public understanding of the program and promote awareness of application procedures;

P. Shall report to the Legislature no later than February 15th annually on the status of the fund, including revenues, expenditures on in-home and community support services, administrative costs, provider reimbursement rates and any other information relating to the fund, and advise the Legislature on appropriate policies related to in-home and community support services;

Q. Shall, if funds available are not sufficient to cover program costs, implement cost-saving measures that curtail benefits as necessary while maintaining eligibility standards; and

R. Shall take any other action necessary to implement the program and enable the board to exercise its powers and carry out its duties under this chapter.

**3. Membership.** The board consists of the following members:

A. Three members who represent personal care agencies as defined in section 1717, subsection 1, paragraph C;

B. Three members who are individual providers or direct care service providers employed by in-home and community support services agencies; and

C. Three members receiving in-home and community support services, or family members or guardians of individuals receiving in-home and community support services.

**4. First board.** By February 1, 2019, the Speaker of the House of Representatives shall appoint 3 members to the first board who satisfy the requirements of subsection 3, paragraphs A to C, respectively; the President of the Senate shall appoint 3 members to

the first board who satisfy the requirements of subsection 3, paragraphs A to C, respectively; and the Governor shall appoint 3 members to the first board who satisfy the requirements of subsection 3, paragraphs A to C, respectively. A member of the first board serves for a one-year term or until the election of that member's successor under subsection 5. A vacancy on the first board is filled in the same manner as the original appointment by the appointing authority. The replacement member serves for the unexpired portion of the term.

**5. Election.** The board shall establish procedures to provide for elections of board members after the terms of the first board members expire. The board shall establish and administer a system of nomination and secret ballot voting by mail or using a secure online voting system by which each member is elected by vote of that member's constituency.

The following persons are eligible to vote for the board members representing their respective constituencies:

- A. All personal care agencies as defined in section 1717, subsection 1, paragraph C, acting through their owners, directors and managers as they may choose;
- B. All individual providers and direct care service providers employed by in-home and community support services agencies; and
- C. All persons receiving in-home and community support services through the program, or their family members.

No later than August 1, 2019, the department shall provide to the board lists of all persons eligible to vote within the constituency categories, including names, addresses and e-mail addresses. The board shall ensure that these lists are used solely for the purpose of providing information relating to the board election and for mailing or e-mailing ballots. The lists must be made available to the constituency associations set forth in section 7290 for purposes of communicating about the election, candidates and issues relating to the program. Persons on the list must be given the opportunity to opt out of receiving communications relating to the program.

The lists described in this subsection are not public records as described in Title 1, section 402, subsection 3. The board may adopt rules to implement this subsection, including rules for the confidentiality of lists and rules detailing the elections process. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**6. Terms; compensation; vacancy.** A member of the board elected under subsection 5 serves a 3-year term and may serve no more than 4 terms. Members receive no compensation for service but are entitled to payment of any necessary expenses, including travel expenses, incurred in the discharge of their duties. A vacancy during the term of a member elected under subsection 5 may be filled by appointment by the commissioner for the remainder of the member's term. A member representing individuals receiving in-home and community support services under subsection 3, paragraph C who received such services upon election but who no longer receives those services may serve the remainder of the member's term. A member appointed or elected under subsection 3, paragraph A or B is no longer eligible to serve if that member no

longer meets the requirements of the respective paragraph unless that member is moving to a new position that will permit the member to meet the same requirements and the gap in qualifying lasts no longer than 8 weeks.

**7. Administrative support; executive director.** The board shall employ an executive director to take all actions appropriate and necessary to administer the program, provide administrative, managerial and technical support for the operations of the board and compile annual reports. The executive director must have expertise relevant to managing the program. The board shall set the salary of the executive director, who serves at the pleasure of the board. The executive director may hire additional professional and administrative staff as necessary to administer the program.

**§7285. Universal Home Care Trust Fund Advisory Committee**

The Universal Home Care Trust Fund Advisory Committee is established under Title 5, section 12004-I, subsection 30-B.

**1. Members.** The advisory committee is composed of the following individuals or their designees:

- A. The commissioner;
- B. The Commissioner of Labor;
- C. The Commissioner of Education;
- D. The Treasurer of State;
- E. The President of the Senate; and
- F. The Speaker of the House of Representatives.

**2. Duties.** The advisory committee shall, on a quarterly basis, review the policies and financial management of the fund and provide guidance and advice to the board and the executive director.

**§7286. Eligibility**

All seniors living in this State and all persons with a disability living in this State are eligible for services under this chapter if they need assistance with at least one activity of daily living as defined in section 7852, subsection 1. Eligibility takes effect no later than September 1, 2019 but the board may implement a ramp-up period for services, to be completed no later than December 31, 2021, as it develops the full scope of the program. A person who resides in a hospital, nursing facility, intermediate care facility for persons with intellectual disabilities, adult family care home or residential care facility, as defined in section 7852, subsection 14, is not eligible for the program. Income may not be a factor for eligibility for any services provided under the program. If demand for the program exceeds the board's ability to provide meaningful benefits to eligible persons, the board may create waiting lists of eligible persons and take such other measures as may be needed to create an orderly process providing eligible persons with benefits as soon as funding is available.

### **§7287. Coordination**

The board and the department shall create a simple, unified process for enrollment in coordination with the other services provided by the department intended to benefit an eligible person.

### **§7288. Outreach**

Beginning April 1, 2019, in accordance with rules adopted by the board, all employers in the State must display in workplaces posters notifying employees of the in-home and community support services available under the program. The Department of Labor shall produce and distribute posters required under this section. The board shall reimburse the Department of Labor for reasonable costs under this section.

### **§7289. Direct service worker costs for in-home and community support services; report**

**1. Direct service worker costs.** Providers of in-home and community support services participating in a covered program shall expend a minimum of 77% of the funding received from the Universal Home Care Program on direct service worker costs. When determining compliance, the board shall calculate this percentage on a statewide, annual basis for each provider. A provider that fails to meet this direct service worker payment minimum may be suspended from the program or required to make additional payments to the respective direct service workers, or both; any additional payments must be for the year in which the provider failed to meet the minimum set forth in this section and must be sufficient to bring the provider into compliance.

**2. Report.** In order to prove compliance with subsection 1, a provider shall submit an annual cost report to the board based upon actual, documented expenditures for direct service worker costs, administrative costs and other costs of program support.

A. The cost report must demonstrate that the provider has expended a minimum of 77% of the funding received from the program for direct service worker costs. The remaining funding received from the program may be spent by the provider on administrative or program support costs.

B. An authorized representative of the provider shall attest to the accuracy of the cost report.

C. The board may require the provider to engage an independent certified public accounting firm to verify the information and data submitted by the provider under this subsection if the board is in possession of evidence to suggest the information and data submitted is inaccurate, incomplete or fraudulent. The provider is responsible for the cost of this audit.

D. For a provider who does not submit a complete, accurate and timely report under this subsection, the board may impose a corrective action plan to reimburse service workers, temporarily suspend the provider from covering additional persons in the program or permanently terminate the provider from the program, in addition to other remedies that may be available.



**3. Rules.** The board may adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Rules adopted by the board pursuant to this section may include definitions of allowable and unallowable costs for purposes of the annual cost report requirement.

**§7290. Constituency associations**

**1. Definition.** As used in this section, "constituency association" means a group of persons within a constituency that is recognized for the purpose of allowing consumers and workers to advocate for their interests before the board, elected officials and the general public.

**2. Access to contact information.** Upon a showing made to the board by a constituency association that at least 250 individuals of a particular constituency wish to have that association advocate for their interests, the board shall provide that association with the names and most recent contact information of the other constituents of the particular constituency eligible to vote in the next board election for the purpose of inviting those individuals to join their constituency association. The board shall provide the names and contact information within 7 days of the request. That association shall maintain the confidentiality of the list and may not share the list with the public or any other entity not authorized by the board.

**3. Dues.** If an employee of a provider of in-home and community support services chooses to join a constituency association, the provider must deduct and remit membership dues to the association if requested by the employee.

**4. Labor unions.** The board shall recognize as a constituency association any labor union that demonstrates that the union has at least 100 members in a constituency.

**§7291. State employees**

For the purposes of the State Employees Labor Relations Act, Title 26, chapter 9-B, individual providers must be considered state employees. This section does not require the treatment of individual providers as state employees for any other purpose. Chapter 9-B applies to individual providers except to the extent inconsistent with this section, in which case this section controls.

**§7292. Rules**

The board shall adopt rules necessary to implement this chapter. Rules adopted by the board pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 4. 36 MRSA c. 723** is enacted to read:

**CHAPTER 723**

**EMPLOYER CONTRIBUTION TO UNIVERSAL HOME CARE THROUGH  
TAX ON HIGH EARNER WAGES**

### **§5001. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. High earner.** "High earner" has the same meaning as in section 5204-C, subsection 1, paragraph A.

**2. Universal home care tax income threshold.** "Universal home care tax income threshold" has the same meaning as in section 5204-C, subsection 1, paragraph B.

**3. Wage income.** "Wage income" has the same meaning as in section 5204-C, subsection 1, paragraph C.

### **§5002. Imposition on employer**

In addition to other taxes, there is imposed on every employer maintaining an office or transacting business in this State an excise tax at the rate of 1.9% on that amount of wage income paid by that employer to any high earner employee in this State that in the tax year exceeds the universal home care tax income threshold.

### **§5003. Tax collected deposited in Universal Home Care Trust Fund**

One hundred percent of the tax collected pursuant to this chapter must be deposited each year into the Universal Home Care Trust Fund established in Title 22, section 7283.

### **§5004. Application**

This chapter applies to tax years beginning on or after January 1, 2019.

**Sec. 5. 36 MRSA §§5204-C and 5204-D** are enacted to read:

### **§5204-C. Additional payroll tax on high earners' wages to support universal home care**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

**A. "High earner"** means a taxpayer with Maine adjusted gross income exceeding the universal home care tax income threshold in a tax year.

**B. "Universal home care tax income threshold"** means the federal Old-Age, Survivors, and Disability Insurance contribution and benefit base set forth in 42 United States Code, Section 430(b), as published in the Federal Register for the applicable tax year.

**C. "Wage income"** means "wages, salaries, tips, and other employee compensation" as set forth in 26 United States Code, Section 32(c)(2)(A)(i).

**2. Tax imposed.** In addition to all other taxes contained in this Part, a tax to support universal home care is imposed on the wage income of high earners for the taxable year. The tax is imposed on that amount of the high earner's wage income that exceeds the

universal home care tax income threshold. This tax is in addition to the excise tax set forth in section 5002.

**3. Tax rate.** The rate of the tax imposed under this section is 1.9%.

**4. Collection.** The Bureau of Revenue Services shall instruct employers to report the tax imposed under this section on the federal form W-2 wage and tax statement in box 14 in the category labeled "Other" with the designation "UHC." This tax must be collected by the employer of the high earner by deducting the amount of the tax from the wages as and when paid.

**5. Tax collected deposited in Universal Home Care Trust Fund.** One hundred percent of the tax collected pursuant to this section must be deposited each year into the Universal Home Care Trust Fund established in Title 22, section 7283.

**6. Application.** This section applies to tax years beginning on or after January 1, 2019.

**§5204-D. Additional tax on high earners' nonwage income to support universal home care**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "High earner" has the same meaning as in section 5204-C, subsection 1, paragraph A.

B. "Universal home care tax income threshold" has the same meaning as in section 5204-C, subsection 1, paragraph B.

C. "Universal home care wage tax credit" means the sum of the taxes paid by an employee pursuant to section 5204-C, subsection 2 plus the taxes owed by the taxpayer's employer pursuant to section 5002.

**2. Tax imposed.** In addition to all other taxes contained in this Part, a tax to support universal home care is imposed on high earners. The tax is imposed on that amount of the high earner's Maine adjusted gross income that exceeds the universal home care tax income threshold for the tax year.

**3. Tax rate; adjustment.** The rate of the tax imposed under this section is 3.8%. The tax owed under this section is reduced by an amount equal to the high earner's universal home care wage tax credit.

**4. Tax collected deposited in Universal Home Care Trust Fund.** One hundred percent of the tax collected pursuant to this section must be deposited each year into the Universal Home Care Trust Fund established in Title 22, section 7283.

**5. Application.** This section applies to tax years beginning on or after January 1, 2019.

**Sec. 6. Program development and implementation.** The following provisions govern the development and implementation of the Universal Home Care Program established under the Maine Revised Statutes, Title 22, chapter 1611.

**1. Start up; appointment of first board.** No later than March 1, 2019, the first Universal Home Care Trust Fund Board appointed pursuant to Title 22, section 7284, subsection 2 shall meet to develop and oversee the implementation of the Universal Home Care Program and to engage in planning with the Department of Health and Human Services. No later than March 1, 2019, the board shall also examine the need for and develop a plan for maintaining or eliminating existing advisory councils relating to in-home and community support services and shall submit a report of its recommendations to the joint standing committee of the Legislature having jurisdiction over health and human services matters relating to the appropriate roles for those councils.

**2. Waivers.** No later than December 31, 2019, the Department of Health and Human Services shall prepare and submit to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services applications to request any necessary waivers to implement the Universal Home Care Program under the Maine Revised Statutes, Title 22, chapter 1611.

## SUMMARY

This initiated bill establishes the Universal Home Care Program to provide in-home and community support services for all people with disabilities living in Maine who require assistance with an activity of daily living and people 65 years of age or older who are living in Maine and who require assistance with an activity of daily living, without regard to income, to be funded by a new tax of 3.8% on income and wages that exceed the maximum wages subject to social security employment taxes.