

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

Introduced

### Senate Bill 591

FISCAL  
NOTE

BY SENATOR DRENNAN

[Introduced February 19, 2018; Referred  
to the Committee on Health and Human Resources;  
and then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §9-5-27, relating to increasing the reimbursement rate for certain Medicaid  
 3 services; setting forth requirements; requiring records be kept; and permitting waiver  
 4 amendments be filed.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 5. MISCELLANEOUS PROVISIONS.**

**§9-5-27. Increasing the reimbursement rate for certain services.**

1 (a) The definitions set forth in §9-1-2 of this code apply to the terms that are used in this  
 2 section.

3 (b) The commissioner shall increase the reimbursement rate for services if the services  
 4 are provided as follows:

5 (1) The services are provided to an individual who receives services under a Medicaid  
 6 waiver under the federal Home and Community Based Services Program.

7 (2) The individual is authorized under the Medicaid waiver described in subdivision (1) of  
 8 this subsection to receive any of the following services:

9 (A) Adult day services;

10 (B) Prevocational services;

11 (C) Residential habilitation and support;

12 (D) Respite;

13 (E) Supported employment and extended services as defined in the family supports  
 14 Medicaid waiver;

15 (F) Community habilitation and participation services;

16 (G) Workplace assistance, as defined in the family supports Medicaid waiver and the  
 17 community integration habilitation Medicaid waiver;

18 (H) Facility habilitation;

19 (I) Residential habilitation and support;

20 (J) Transportation services;

21 (K) Participant assistance and care, as defined in the family supports Medicaid waiver;

22 and

23 (L) Facility based support, as defined in the family supports Medicaid waiver and the  
24 community integration habilitation Medicaid waiver.

25 (3) The services are delivered to the individual by a direct care staff.

26 (c) The amount of the increase in the reimbursement rate described in subsection (b) of  
27 this section for the fiscal year beginning July 1, 2018, and thereafter, is the reimbursement rate in  
28 effect as of June 30, 2018, for the services listed in subdivision (2), subsection (b) of this section  
29 multiplied by 5 percent.

30 (d) An authorized service provider shall use at least 75 percent of the amount of the  
31 increase in the reimbursement rate to increase the wages paid to direct care staff who:

32 (1) Are employed by the authorized service provider to provide services in West Virginia;

33 and

34 (2) Provide support services listed in subdivision (2), subsection (b) of this section.

35 (e) If a provider does not use at least 75 percent of the increase to increase wages paid  
36 to direct care staff, the department shall recoup part or all of the increase in the reimbursement  
37 rate that the provider receives as provided in subsection (g) of this section.

38 (f) An authorized service provider providing services in West Virginia shall provide written  
39 and electronic notification of its plan to increase wages to:

40 (1) Direct care staff employed by the provider; and

41 (2) The commissioner within 30 days after the department implements an increase in  
42 reimbursement rates.

43 (g) The department may recoup the difference between 75 percent of the amount received  
44 by a provider as a result of increased reimbursement rates and the amount of the increase that is  
45 actually used by the provider to pay an increase in wages to direct care staff. The remaining 25

46 percent may be retained by the provider to cover the other employer-related costs of providing  
47 direct care services, including payroll taxes, benefits, and paid time for nondirect services such  
48 as paid time off and training.

49 (h) Providers shall maintain all books, documents, papers, accounting records, and other  
50 evidence required to support the reporting of payroll information for increased wages to direct  
51 care staff. Wages are defined as total compensation less overtime and shift differential for direct  
52 care staff providing services to individuals receiving the services described in subdivision (2),  
53 subsection (b) of this section as reported on the provider's payroll records. Providers shall make  
54 these materials available at their respective offices at all reasonable times and for three years  
55 from the date of final payment for the services listed in subdivision (2), subsection (b) of this  
56 section for inspection by the state or its authorized designees. Providers shall furnish copies at  
57 no cost to the state if requested.

58 (i) The department or its designee may recoup all or a part of the amount paid using the  
59 increased reimbursement rates based upon an audit or review of the supporting documentation  
60 required to be maintained under subsection (h) of this section if the provider cannot provide  
61 adequate documentation to support the increased wages to direct care staff.

62 (j) If required, the department shall file Medicaid waiver amendments for the family  
63 supports Medicaid waiver and the community integration and habilitation Medicaid waiver related  
64 to rate increases and Medicaid waiver caps only on or before September 30, 2018, with the  
65 earliest possible effective date allowed by the federal Centers for Medicare and Medicaid  
66 Services. If the federal Centers for Medicare and Medicaid Services deny the Medicaid waiver  
67 amendments, the department may modify the waiver amendment request. If a waiver amendment  
68 is not approved, rate increases may not be granted under this section.

69 (k) This section may not be construed as creating an employment relationship of any kind  
70 between department staff and direct care staff of an authorized service provider.

NOTE: The purpose of this bill is to increase the reimbursement rate for certain Medicaid services. The bill sets forth requirements. The bill requires records be kept. The bill permits waiver amendments be filed.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.