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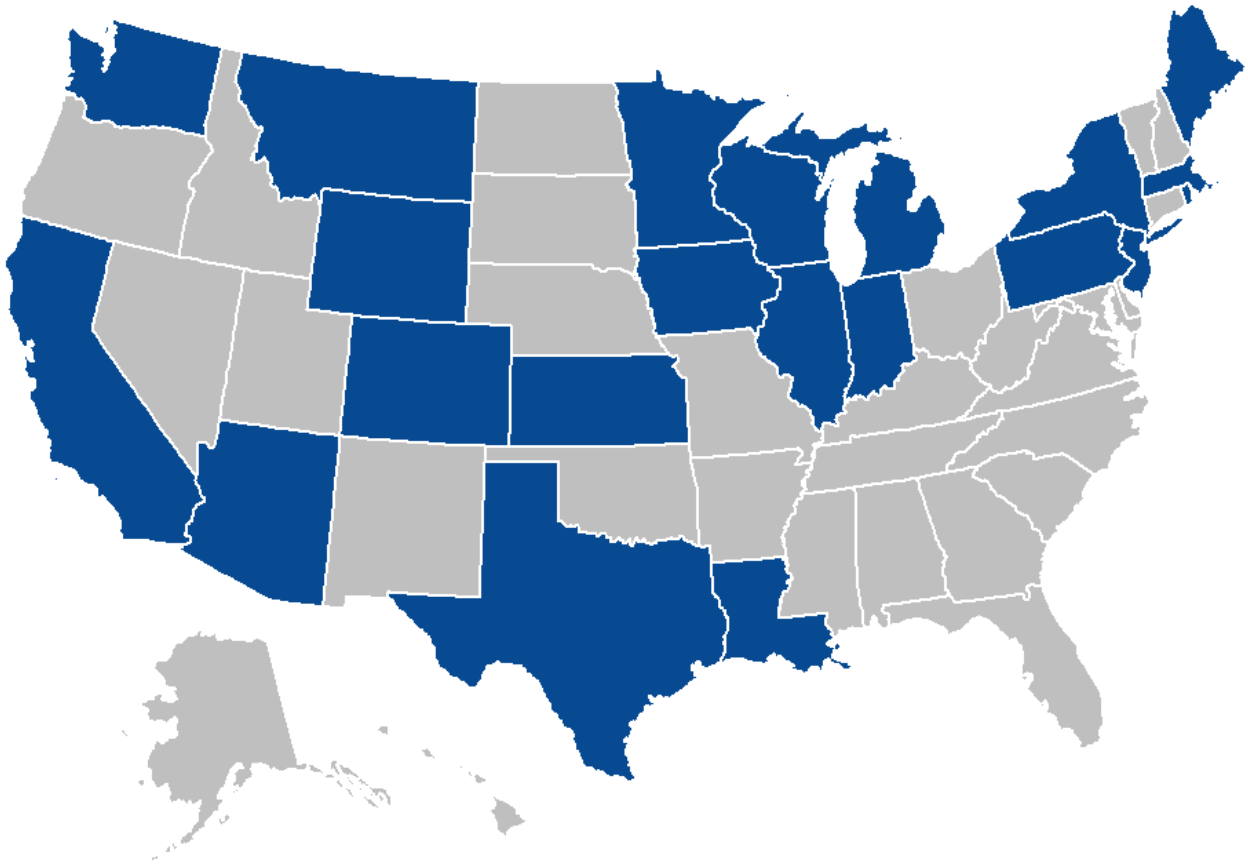
The Institute for Healing Justice & Equity

WAGE PASS-THROUGH LAW FINAL REPORT



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Contents

Background

The need for direct-care workers who provide care to the elderly in Medicaid funded nursing homes and in home- and other community-based long-term care programs is increasing rapidly, yet staff shortages continue because of the low wages offered to these workers.[1]

The Medicaid Act does not explicitly address wage pass-throughs for direct care workers providing care to the elderly. Thus, to address these issues, some states have implemented "wage pass- through" (WPT) laws. Most WPT laws provide an additional allocation of funds to nursing homes and/or home health agencies that must be passed on to direct care workers through increased compensation (wages/benefits).[2] Typically, WPT's have been implemented by:

1. Designating **some dollar amount to be added** to wages/benefits;[3]
2. Designating a **certain percentage of a reimbursement rate increase** be used for wages/benefits;[4] or
3. Designating a **trust fund or assessment** to be used to increase wages/benefits.

Additional relevant characteristics used to classify WPT laws include:

1. **Size of the Wage Increase:** At what level should the proposed wage increase be set to attract/retain workers to direct-care jobs?
2. **Equity (Target Population):** Will the wage increase be extended to direct-care workers across all health care settings? Only in long-term care settings? Or only within a subset of long-term care providers?
3. **Universality (Provider Participation):** Is provider participation in the wage pass-through optional or mandatory?
4. **Specificity:** How flexible or specific should the guidelines be for use of the funds?
5. **Accountability (Monitoring):** What audit and enforcement procedures need to be in place, and how do they relate to existing payment and auditing systems?
6. **Continuity:** Will funding for the pass-through be a one-time wage adjustment or will it be built into the rate as a base for subsequent years?
7. **Notice (Implementation):** How much time and education do providers need to implement the increase as envisioned by the state?[5]

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[1] Reagan Baughman and Kristin Smith, *The Effect of Medicaid Wage Pass-Through Programs on the Wages of Direct Care Workers,* 48 Med. Care 426, 426 (2010); Zhanlia Feng et. al, *Do Medicaid Wage Pass-through Payments Increase Nursing Home Staffing?*, 45 Heath Serv. Research 728, 729 (2010).
[2] HHS, et al., *State Wage Pass through Legislation: An Analysis* (Workforce Issues: No. 1 (Dec. 2002).
[3] North Carolina Division of Facility Services, *Results of a Follow-Up Survey to States on Wage Supplements for Medicaid and Other Public Funding to Address Aide Recruitment and Retention in Long-Term Care* (Nov. 4, 2000).
[4] *Id.*
[5] Excerpted from HHS, et al., *State Wage Pass through Legislation: An Analysis* (Workforce Issues: No. 1 (Dec. 2002).

By 2002, twenty-seven states[6] had implemented WPT laws. Michigan was the first state recognized to have a WPT law.[7] In the early 2000s, there were three major reports issued that tracked state passage of WPT laws:

1. HHS, et al., *State Wage Pass through Legislation: An Analysis* (Workforce Issues: No. 1 (Dec. 2002);
2. North Carolina Division of Facility Services, *Results of a Follow-Up Survey to States on Wage Supplements for Medicaid and Other Public Funding to Address Aide Recruitment and Retention in Long-Term Care* (Nov. 4, 2000); and
3. GAO, *Nursing homes: Sustained Efforts Are Essential to Realize Potential of the Quality* Initiatives, GAO/HEHs-00197 (Sept. 2000).

However, these reports failed to include citations to the supporting documents and not all the reports included a discussion of all the relevant characteristics. Furthermore, since these reports were issued, several states repealed or changed their WPT laws. Hence, in this report, we update the information from those reports, include all of the pertinent information, and provide citations to the supporting documents for each of the twenty-two states that have valid WPT laws as of December 17, 2019.[8]

[6] HHS, et al., *State Wage Pass through Legislation: An Analysis* (Workforce Issues: No. 1 (Dec. 2002); North Carolina Division of Facility Services, *Results of a Follow-Up Survey to States on Wage Supplements for Medicaid and Other Public Funding to Address Aide Recruitment and Retention in Long-Term Care* (Nov. 4, 2000); GAO, *Nursing homes: Sustained Efforts Are Essential to Realize Potential of the Quality* Initiatives, GAO/HEHs-00197 (Sept. 2000).

[7] The law was implemented in 1990. North Carolina Division of Facility Services, *Results of a Follow-Up Survey to States on Wage Supplements for Medicaid and Other Public Funding to Address Aide Recruitment and Retention in Long-Term Care* (Nov. 4, 2000). California actually had the first law, which was implemented in 1985, but not recognized as a WPT law until 1999. *See* 1999 Bill Text California Assembly Bill 1107 (1999); Cal Wel & Inst Code § 14110.6 (1999).

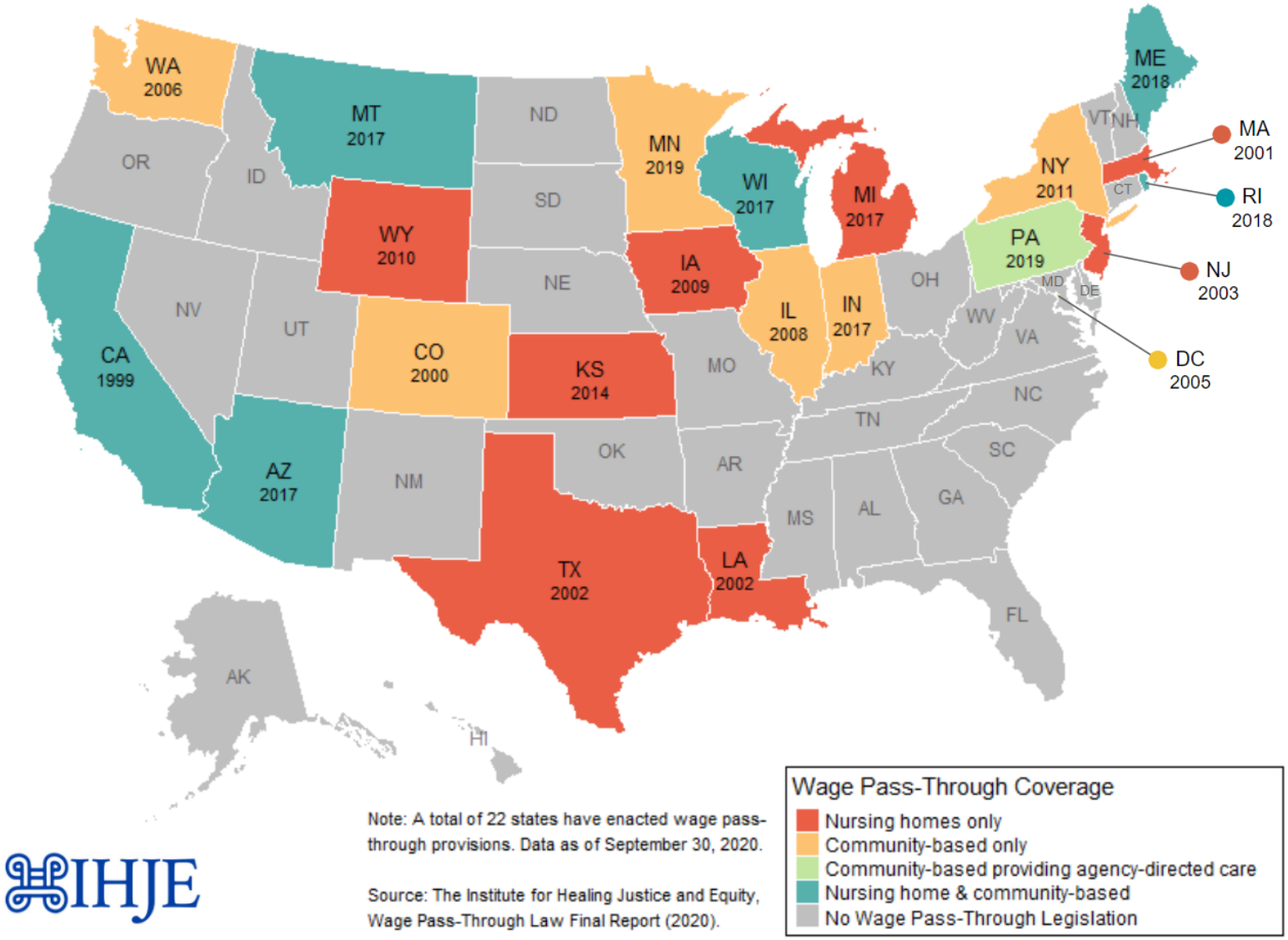
[8] This report only included states that have WPT laws for direct care workers providing care to the elderly. Thus, if a state only had WPT laws for direct care workers providing care to the disabled, the state was excluded from the report. Moreover, if a state had WPT laws for direct care workers providing care to the disabled and the elderly, the only information included in this report concerns WPT laws for direct care workers providing care to the elderly.

Summary of State Wage Pass-Through Legislation, 2020

State	WPT	In PHI 2002 Report	Date of Latest WPT	Type of Law	Nursing Home or Community Based
Arizona	✓	✓	2017	Guidance add on to minimum wage law	NH and CB
California	✓	✓	1999	Appropriation bills; statutes and regulations	NH and CB
Colorado	✓	✓	2000	Statute	CB
District of Columbia	✓		2005	Appropriation bills; regulations	CB
Illinois	✓	✓	2008	Statutes and regulations	CB
Indiana	✓		2017	Appropriation bills; statutes and regulations	CB
Iowa	✓		2009	Fund financed by NH	NH
Kansas	✓	✓	2014	Statutes and regulations	NH
Louisiana	✓	✓	2002	Fund financed by NH	NH
Maine	✓	✓	2018	Appropriation bills; regulations	NH and CB
Massachusetts	✓	✓	2001	Appropriation bills; regulations	NH
Michigan	✓	✓	2017	Fund financed by NH	NH
Minnesota	✓	✓	2019	Statutes	CB
Montana	✓	✓	2017	Appropriation bills; regulations	NH and CB
New Jersey	✓		2003	Fund financed by NH	NH
New York	✓		2011	Statutes and regulations	CB
Pennsylvania	✓		2019	Appropriation bills; fiscal code	CB providing agency-directed care
Rhode Island	✓	✓	2018	Appropriation bills; statutes	NH and CB
Texas	✓	✓	2002	Statutes and regulations	NH
Washington	✓	✓	2006	Statute	CB
Wisconsin	✓	✓	2017	Appropriation bills	NH and CB
Wyoming	✓	✓	2010	Appropriation bills	NH

**Note.* WPT = Wage Pass-Through. NH = Nursing Home. CB = Community Based.
Source: The Institute for Healing Justice and Equity, Wage Pass-Through Law Final Report (2020). Data as of September 30, 2020.

State Wage Pass-Through, 2020
Coverage & Year of Latest Wage Pass-Through Legislation



Note: A total of 22 states have enacted wage pass-through provisions. Data as of September 30, 2020.

Source: The Institute for Healing Justice and Equity, Wage Pass-Through Law Final Report (2020).

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States with WPT laws

1. **ARIZONA**

a. Date Current Program Started

The program started in 2017 in response to the passage of Proposition 206, the Minimum Wage and Paid Time Initiative, a voter passed law.[9] The WPT law was created by guidance issued by the Arizona Health Care Cost Containment System (AHCCCS).

b. Type of WPT

The WPT law designates that a **certain percentage of a reimbursement rate increase** would be used for wages. Proposition 206 raised the minimum wage from $8.05 to $12.00, which increased direct care worker costs by an additional $1,424,027.[10] AHCCCS responded by increasing fee for service rates for the Home and Community-Based Service fee schedule and the Nursing Facility per diem rates for dates of service on and after January 1, 2017.

c. Size of Increase

The size of increase for reimbursement for select Home and Community-Based Fee schedule rates was 7%.[11] The size of increase for reimbursement for Nursing Facility per diem rates was 3.5%.[12]

d. Equity

The increase applies to both residential and community-based direct care workers.[13]

e. Universality

Provider participation seems mandatory because it is connected to the mandatory minimum wage increase.

f. Specificity

Unclear.

g. Accountability

None.

h. Continuity

Through the year 2020.

i. Notice

Notice was published as part of a public notice from the Arizona Health Care Cost Containment System.

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[9] Arizona Health Care Cost Containment System, Notice of Public Information regarding fees and per diem rates (2017), https://www.azahcccs.gov/shared/Downloads/News/20170101HCBSNFPubnotFinal.pdf

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

2. CALIFORNIA

a. Date of Current Program Started

The program started in 1999.[14] The WPT laws were created by appropriations bills, statutes, and regulations.

b. Type of WPT

The WPT law designates that a **certain percentage of a reimbursement rate increase** would be used for wages. The statute lays out rate increases for a variety of direct care services provided in different facilities such as workers in nursing facilities providing skilled nursing services and intermediate care services.[15] The statute also includes an important provision that all direct care staff must be paid at least the prevailing federal or state minimum wage[16] as well as wage add-ons.[17]

In 2000, the California Legislature passed a one-time appropriation (2000 WPT law) that allocated $5,057,000 to increase the salary, wage, and benefits of direct care workers providing supported living services.[18] In 2016, the Legislature passed another one-time appropriation (2016 WPT law) allocating $169,500,000 for the purpose of enhancing wages and benefits for staff who spend a minimum of 75 percent of their time providing direct services.[19]

c. Size of Increase

The size of the increase depends upon the services offered and the type of facility being reimbursed. When the WPT law was passed, it laid out the following rate increases that are still in effect today: nursing facilities receive a $1.96 increase per patient day for patients receiving skilled nursing services and $1.58 per patient day for patients receiving intermediate care services.[20] Wages also increased as a result of the appropriations passed in 2000 and 2016, [21] but it is unclear how much these appropriations added to wages.

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[14] This law was originally passed in 1985, but for unknown reasons was not recognized as a wage pass-through law until it was amended in 1999 by 1999 Bill Text CA A.B. 1107 (1999). 1999 Bill Text California Assembly Bill 1107 (1999); Cal Wel & Inst Code § 14110.6 (1999).
[15] Cal Wel & Inst Code § 14110.6 (1999).
[16] *Id.*
[17] *Id.*
[18] Cal Wel & Inst Code § 4689.7 (2000). It was implied that the legislature expected that the needs of workers providing supported living services would be addressed and added to the state Medicaid case-mix methodology in the future.
[19] Cal Wel & Inst Code § 4691.10 (2016).
[20] Cal Wel & Inst Code § 14110.6 (1999). This also includes additional increases of $2.35 per patient day for intermediate care facilities/developmentally disabled-habilitative patients in facilities with 4 to 6 beds, and $1.98 per patient day for intermediate care facilities/developmentally disabled-habilitative patients in facilities with 7 to 15 beds.
[21] Cal Wel & Inst Code §§ 4689.7 and 4691.10 (2000).

d. Equity

The increase applies to both residential and community-based direct care workers. Specifically, it covers those providing skilled nursing services,[22] intermediate care services,[23] supported living services,[24] in-home respite care,[25] and personal assistance services.[26] Direct care workers include: registered nurses and licensed vocational nurses, nursing aides, aides, practical nurses, orderly's, nurse assistants, and certified nurse assistants, respiratory care practitioners, respiratory technicians, respiratory therapist inhalation technicians, and inhalation therapists, qualified mental retardation professionals, lead personnel employed in the performance of direct care to patients, registered nurses and licensed vocational nurses.[27] Secondary materials indicate that funds can be spent on additional workers not listed in the above statute;[28] however, this language was not found in any of the available statutes.

The 2016 WPT law provided an add-on for direct care workers was for services, supports, care, supervision, or assistance provided by staff directly to a consumer to address the consumer's needs as identified in the individual program plan, and include staff's participation in training and other activities directly related to providing services to consumers, as well as program preparation functions.[29]

The 2000 GAO report also spoke of a program called the Wage Adjustment Rate Program (WARP) that allowed each provider to negotiate a specific amount for the wage increase with its workers, which was then funded through the state's Medi-Cal program.[30] This, program could not be verified in the statutes.

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[22] Cal Wel & Inst Code § 14110.6 (1999).
[23] *Id.*
[24] Cal Wel & Inst Code § 4689.7 (2000). The funds are meant to support direct care workers providing supported living services.
[25] 1999 Legis. Bill Hist. CA S.B. 1104 (1999).
[26] Cal Wel & Inst Code §§ 4691.9 and 4691.10 (2016).
[27] *Id.*
[28] A 2000 GAO report stated that one of California's wage pass-through laws passed in 2000 expanded who could benefit from the wage increases to include housekeeping and dietary staff. *See* United States General Accounting Office. *Nursing Homes: Sustained Efforts Are Essential to Realize Potential of the Quality Initiatives*. United States General Accounting Office; 2000, https://www.gao.gov/new.items/he00197.pdf.
[29] Cal Wel & Inst Code § 4691.10 (2016). The funds are meant for staff that spend a minimum of 75 percent of their time providing direct services.
[30] U.S. Department of Health and Human Services. STATE WAGE PASS-THROUGH LEGISLATION: AN ANALYSIS, (2002). Retrieved from https://aspe.hhs.gov/basic-report/state-wage-pass-through-legislation-analysis

e. Universality

None of the statutes specifically mention whether the terms are optional or mandatory. However, secondary materials confirm that the WPT laws are mandatory for all providers.[31]

f. Specificity

The 1999 WPT law states that the funds must be used to increase wages and benefits for direct care workers in nursing facilities and intermediate care facilities/developmentally disabled, intermediate care facilities/developmentally disabled-habilitative, and intermediate care facilities/developmentally disabled-nursing facilities.[32]

Under the 2000 WPT law funds must be used to increase the salary, wage, and benefits for direct care workers providing supported living services.[33]

Under the 2016 WPT law, the $169,500,000 allocated must be used to enhance wages and benefits for staff that spend a minimum of 75 percent of their time providing direct services.[34] The rate increase only applies to direct services for which rates are set by the department or through negotiations between the regional centers and service providers and to the rates paid for supported employment services, and vouchered community-based services.[35]

g. Accountability

The state ensures accountability by conducting facility payroll audits and collecting provider surveys. Through both, the state is able to ensure that wages are being passed through appropriately and regulations are being followed.[36]

The 1999 WPT law gave the state the power to inspect payroll and personnel records of facilities receiving funds to ensure that salary, wage, and benefit increases have been implemented.[37] While the 2000 WPT law did include an accountability provision, the 2016 WPT law required the state to survey a random sample of service providers in each service category and request information regarding staff and total wages.[38] The 2016 WPT law also granted the state the authority to audit providers who use the increased rates.[39]

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[31] U.S. Department of Health and Human Services. STATE WAGE PASS-THROUGH LEGISLATION: AN ANALYSIS, (2002). Retrieved from https://aspe.hhs.gov/basic-report/state-wage-pass-through-legislation-analysis

[32] Cal Wel & Inst Code § 14110.6 (1999).

[33] Cal Wel & Inst Code § 4689.7 (2000).

[34] Cal Wel & Inst Code § 4691.10 (2016).

[35] *Id.*

[36] *Id.*; Cal Wel & Inst Code §§ 14110.6 and 4689.7 (1999).

[37] Cal Wel & Inst Code § 14110.6 (1999).

[38] Cal Wel & Inst Code § 4691.10 (2016).

[39] *Id.*

h. Continuity

The initial WPT law has been in effect since 1985 and has not been repealed.[40] The appropriations bills were one time increases.

i. Notice

When the 1999 WPT law was originally passed in 1985, it stated that the regulations would be adopted and effective on March 15, 1985 for skilled nursing facilities and intermediate care facilities.[41] It further stated that on October 1, 1990, these requirements became operative for nursing facilities. Information about how funds should be spent was not provided until April 2000.

The 2000 WPT law stated that it needed to be implemented during the fiscal year 1999-2000.[42] By July 1, 2002, it also required that a methodology for determining supported living costs and providing payment for supported living services providers be established. The 2016 WPT law only stated that the state must receive all forms from nursing homes by October 1, 2017.[43]

[40] This law was originally passed in 1985, but for unknown reasons was not recognized as a wage pass-through law until it was amended in 1999 by 1999 Bill Text CA A.B. 1107 (1999).
[41] California Welfare & Institutions Code § 14110.6 (1999).
[42] Cal Wel & Inst Code § 4689.7 (2000).
[43] Cal Wel & Inst Code § 4691.10 (2016).

3. **COLORADO**

a. Date Current Program Started

The program started in 2000 and applied to nursing homes.[44] However, there is no current record of this program. The current program started in 2019 in response to passage of the Colorado Medical Assistance Act of 2016.[45]

b. Type of WPT

The WPT law designates that a **certain percentage of a reimbursement rate increase** would be paid to home care agencies to ensure that the direct care worker is making $12.40 per hour.[46] The state provides the money for the increase, but it also requested money from the federal government to cover the increase.[47] Specifically, the state asked the federal government for an increase of eight and one-tenth percent in the reimbursement rate for homemaker, homemaker enhanced, and personal care services delivered to consumers through the home- and community-based service waivers.[48]

c. Size of Increase

Unclear.

d. Equity

The increase is for community-based direct care workers. Specifically, it applies to workers providing personal care services, homemaker services, or in-home support services.[49]

e. Universality

Mandatory for home health agencies who receive funding pursuant the Colorado Medical Assistance Act.

f. Specificity

If the state receives the federal funding requested, then for the 2019-20 fiscal year, each home care agency shall pay one hundred percent of the funding that results from the rate increase as compensation to nonadministrative employees (i.e. those who provide personal care services, homemaker services, and in-home support services to consumers).[50] This compensation shall be provided in addition to the rate of compensation that the employee was receiving as of June 30, 2019. For an employee who was hired after June 30, 2019, the home care agency shall use the lowest compensation paid to an employee of similar functions and duties as of June 30, 2019, as the base compensation to which the increase is applied.[51]

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[44] North Carolina Division of Facility Services, *Results of a Follow-Up Survey to States on Wage Supplements for Medicaid and Other Public Funding to Address Aide Recruitment and Retention in Long-Term Care* (Nov. 4, 2000).
[45] Colo. Rev. Stat. §§25.5-6-1603(1) and (2) (2019).
[46] Colo. Rev. Stat. §25.5-6-1603(2) (2019).
[47] Colo. Rev. Stat. §25.5-6-1602(1) (2019).
[48] *Id.*
[49] Colo. Rev. Stat. §25.5-6-1603(2) (2019).
[50] Colo. Rev. Stat. §25.5-6-1602(2) (2019).
[51] Colo. Rev. Stat. §25.5-6-1602(2) (2019).

For the 2020-21 fiscal year, home care agencies receiving the increase "must use eighty-five percent of the funding resulting from the increase to raise compensation for nonadministrative employees above the rate of compensation that nonadministrative employees are receiving as of June 30, 2020."[52] Any remaining funding resulting from the reimbursement rate increase, may be used for general and administrative expenses, such as chief executive officer salaries, human resources, information technology, oversight, business management, general record keeping, budgeting and finance, and other activities not identifiable to a single program."

g. Accountability

Each home care agency shall track and report how it used any funding resulting from the increase in the reimbursement rate for the 2019-20 fiscal year and the 2020-21 fiscal year using a reporting tool developed by the state department.[53] On or before December 31, 2020, each home care agency shall submit the report to the state department demonstrating how the funding was used to increase compensation for the 2019-20 fiscal year.[54] On or before December 31, 2021, each home care agency shall report to the state department how the funding was used to increase or, in the event that there is no reimbursement rate increase, maintain each employee's compensation for the 2020-21 fiscal year.[55] The state department has ongoing discretion to request information from a home care agency demonstrating how it maintained increases in compensation for nonadministrative employees beyond the reporting period.

Each home care agency shall maintain all books, documents, papers, accounting records, and other evidence required to support the reporting of payroll information for increased compensation to nonadministrative employees for at least three years from the reporting deadlines for each respective fiscal year.[56] Each home care agency shall make the information and materials available for inspection by the state department or its designees at all reasonable times.[57]

The state department may recoup part or all of the funding resulting from the increase in the reimbursement rate for the 2019-20 fiscal year or the 2020-21 fiscal year, if the state department determines that a home care agency: 1) did not use correct percent of the funding resulting from the rate increase to raise compensation for nonadministrative employees or 2) failed to track and report how it used any funds resulting from the increase in the reimbursement rate.[58]

If the state department makes a determination that the home care agency did not use the funding correctly or keep track of it correctly, the state department shall notify the home care agency in writing of the state department's intention to recoup funds. A home care agency

[52] Colo. Rev. Stat. §25.5-6-1603(3) (2019).
[53] Colo. Rev. Stat. §25.5-6-1603(4)(a) (2019).
[54] *Id.*
[55] *Id.*
[56] Colo. Rev. Stat. §25.5-6-1603(4)(b) (2019).
[57] *Id.*
[58] Colo. Rev. Stat. §25.5-6-1603(5)(a) (2019).

has forty-five days after receiving such notice to: 1) challenge the determination of the state department; 2) provide additional information to the state department demonstrating compliance; or 3) submit a plan of correction to the state department.[59] The state department shall notify a home care agency in writing of its final determination after affording the home care agency the opportunity to take one of the abovementioned actions.[60]

The state department shall recoup from a home care agency any funding resulting from the increase in the reimbursement rate for the 2019-20 fiscal year or the 2020-2021 fiscal year that the home care agency received but did not use for compensation for nonadministrative employees if: 1) the home care agency fails to respond to a notice of determination of the state department within the time provided; 2) the home care agency is unable to provide documentation of compliance; or 3) the state department does not accept the plan of correction submitted by the home care agency.[61]

h. Continuity
Specifies requirements through fiscal year 2020-21.

i. Notice
If the federal government approves the additional funding for the fiscal year 2019-2020, within sixty days after the approval, each home care agency shall provide written notification to each nonadministrative employee of the agency who provides personal care services, homemaker services, or in-home support services of the compensation they are entitled to.[62] Finally, procedures for reviewing and enforcing training requirements for the enactment of C.R.S. §25.5-6-1603 must be in place by January 1, 2020.

[59] Colo. Rev. Stat. §25.5-6-1603(5)(b) (2019).
[60] Colo. Rev. Stat. §25.5-6-1603(5)(c) (2019).
[61] Colo. Rev. Stat. §25.5-6-1603(5)(d) (2019).
[62] Colo. Rev. Stat. §25.5-6-1602(3) (2019).

4. **DISTRICT OF COLUMBIA**

a. Date Current Program Started

The program started in 2005.[63] The WPT laws were created by appropriation bills and regulations.

b. Type of WPT

The WPT laws designate a **certain percentage of a reimbursement rate increase** be used for wages/benefits.

c. Size of Increase

The 2005 WPT law made a one-time appropriation to increase the hourly wage of Medicaid home care workers to $10.50 for fiscal year 2006.[64]

The 2014 WPT law increases the Medicaid reimbursement rate to ensure that personal care assistants (PCAs) are being paid a living wage as prescribed by the Living Wage Act of 2006.[65] Specifically, the regulation sets reimbursement per unit for allowable services at ($5.02), and at least ($3.46) of that must be used to pay PCAs.[66] PCAs must be paid the wage as prescribed by the Living Wage Act of 2006 ($14.50 per hour in 2019).[67]

d. Equity

The increase applies to community-based direct care workers, including home care workers and PCAs. The 2005 WPT law applied only to Medicaid home care workers.[68]

The 2014 WPT law applies only to PCAs.[69] PCAs are home care workers who work for home care agencies that provide services to Washington D.C.'s Medicaid beneficiaries.[70]

[63] 52 D.C. Reg. 7503 § 5259 (2005).
[64] *Id.*
[65] CDCR 29-5015 (2019).
[66] *Id.*
[67] *Id.*
[68] 52 D.C. Reg. 7503 § 5259 (2005).
[69] CDCR 29-5015 (2019); CDCR 29-5000 (2019).
[70] CDCR 29-5000 (2019).

e. Universality

The 2005 WPT law was mandatory for Medicaid providers who provide home care services, for any "provider that fails to meet this minimum wage requirement shall be ineligible to receive [Medicaid] funds."[71]

The 2014 WPT law seems also to be mandatory for Medicaid providers who provide home care services through PCAs.[72]

f. Specificity

The 2005 WPT law requires that the funds be used to make sure that the *hourly wage* for Medicaid home care workers is at least $10.50.[73]

The 2014 WPT law requires that the funds be used to make sure that the *hourly wage* for PCAs be at least that mandated by the Living Wage Act of 2006.[74]

g. Accountability

It is unclear how the hourly wage was policed/enforced for the 2005 WPT law.[75]

It is also unclear how the hourly wage will be policed/enforced for the 2014 WPT law.[76] However, a D.C. 2019 Minimum Wage Fact Sheet states that, "the Department of Employment Services (DOES) Office of Wage-Hour and the D.C. Office of Contracting and Procurement share monitoring responsibilities" for the minimum wage.[77]

h. Continuity

The 2005 WPT law was a one-time appropriation for fiscal year 2006 to meet the $10.50 minimum hourly rate.[78]

For the 2014 WPT law, appropriations seem to continue to ensure that PCAs are paid the wage required by the Living Wage Act of 2006.[79] The wage for 2019 is $14.50.[80]

[71] 52 D.C. Reg. 7503 § 5259 (2005).
[72] CDCR 29-5015 (2019).
[73] 52 D.C. Reg. 7503 § 5259 (2005).
[74] CDCR 29-5015 (2019).
[75] 52 D.C. Reg. 7503 § 5259 (2005).
[76] CDCR 29-5015 (2019).
[77] D.C. 2019 Living Wage Fact Sheet.
[78] 52 D.C. Reg. 7503 § 5259 (2005).
[79] CDCR 29-5015 (2019).
[80] D.C. 2019 Living Wage Fact Sheet.

i. Notice

The 2005 WPT law was enacted on Aug. 12, 2005, and penalties for non-compliance began on Nov. 1, 2005.[81]

The 2014 WPT law, which required Medicaid home care providers to pay PCAs the Living Wage Act's minimum wage, went into effect on July 4, 2014.[82] It is unclear what the timeline is for this law.

[81] 52 D.C. Reg. 7503 § 5259 (2005).
[82] CDCR 29-5015 (2019); 61 D.C. REG. 6818.

5. **ILLINOIS**

a. Date Current Program Started

The program started in 2008.[83] The WPT law was created through statute and regulations to increase wages for homemakers that work for a provider agency.[84]

b. Type of WPT

The WPT law designates **some dollar amount to be added** to wages/benefits and a **certain percentage of a reimbursement rate increase** be used for wages/benefits.[85] Specifically, the law for homemakers creates an hourly wage increase and an "enhanced rate" toward the cost of health insurance benefits for homemakers.[86]

c. Size of Increase

The reimbursement rate for homemaker services was increased to provide at least a $0.72 hourly wage increase. Also, the "enhanced rate" for these workers' health insurance must be at least $1.77 per hour.[87] In addition, in Illinois' Community Care Program, provider agencies must spend a minimum of 77% of their Medicaid reimbursement rate to compensate direct service workers.[88]

d. Equity

The increase is for community-based direct care workers, specifically homemakers, who provided services through Illinois Medicaid's Community Care Program. The Community Care Program focuses on preventing institutionalization for individuals 60 or older who have or are at risk for developing Alzheimer's (and related conditions).[89]

e. Universality

The hourly wage increase is *mandatory*, as the statute reads that "the rates shall be increased. . . by at least $.72 per hour" to increase homemaker wages.[90] Also, cost reports regarding compliance with this wage increase must be submitted to the Department.[91] The law also provides an *optional* enhanced rate for health insurance.[92] Eligibility for the enhanced rate for health insurance can be denied/removed and applies "only if" a provider agency offers health insurance benefits to its homemakers.[93]

f. Specificity

The increase must be used for wages and health insurance coverage.[94]

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[83] 89 Ill. Adm. Code 240.2023 (2008).
[84] 20 ILCS 105/4.02 (2019).
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] 89 Ill. Adm. Code 240.2040 (2004).
[89] 20 ILCS 105/4.02 (2019).
[90] 20 ILCS 105/4.02 (2019).
[91] 89 Ill. Adm. Code 240.2023 (2019).
[92] 89 Ill. Adm. Code 240.1970 (2019).
[93] *Id.*
[94] 20 ILCS 105/4.02 (2019).

g. Accountability

Provider agencies must submit cost reports verifying compliance.[95] Also, provider agencies must submit an application each fiscal year in order to receive the enhanced rate for health insurance coverage.[96]

h. Continuity

The reimbursement rate increase and the enhanced rate seem to be continuous, until an amendment occurs.[97]

i. Notice

Provider agencies must submit a cost report verifying compliance "within 60 calendar days after issuance of written notification of such a rate increase by the Department."[98]

[95] 89 Ill. Adm. Code 240.2023 (2019).
[96] 89 Ill. Adm. Code 240.1970 (2019).
[97] *See* 20 ILCS 105/4.02 (2019).
[98] 89 Ill. Adm. Code 240.2023 (2019).

6. INDIANA

a. Date Current Program Started

The program started in 2001.[99] In 2017, Indiana passed a WPT law to increase the wages of direct care workers providing home and community-based services under a Medicaid waiver.[100] The WPT laws were created by appropriations bills, statutes and regulations.

The 2001 and 2003 WPT laws were implemented through appropriation bills.[101] The 2017 WPT was implemented through a statute – and it went into effect on April 27, 2017.[102]

b. Type of WPT

The WPT laws designate a **certain percentage of a reimbursement rate increase** be used to increase wages for home health care workers[103] and workers providing home and community-based services (HCBS) under a Medicaid waiver.[104] The 2017 WPT law requires providers to meet the following conditions: 1) the services must be provided under a Medicaid waiver for the federal [HCBS] program; 2) the individual receiving services is authorized under the waiver to receive services; and 3) a direct care worker must provide the services.[105]

c. Size of Increase

Unclear. In 2017, the reimbursement rate given to providers was multiplied by five percent in order to increase the wages given to direct care workers.[106]

d. Equity

The increase applies to community-based direct care workers. Specifically, it covers direct care workers providing services that fall under the home and community-based Medicaid waiver program.[107]

e. Universality

The participation of applicable providers seems to be mandatory, because the statute provides that the "Office of the Secretary *shall* increase the reimbursement rate. . ."[108]

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[99] IN H.B. 1001 (2003); IN H.B. 1001 (2001).
[100] Indiana Code, I.C. § 12-15-1.3-18 (2017).
[101] IN H.B. 1001 (2003); IN H.B. 1001 (2001).
[102] Indiana Code, I.C. § 12-15-1.3-18 (2019).
[103] IN H.B. 1001 (2003); IN H.B. 1001 (2001).
[104] Indiana Code, I.C. § 12-15-1.3-18(b)(1) (2017).
[105] *Id.*
[106] Indiana Code, I.C. § 12-15-1.3-18(c) (2017).
[107] *Id.*
[108] (emphasis added). Indiana Code, I.C. § 12-15-1.3-18 (2017).

f. Specificity

The WPT law states that providers receiving the increased reimbursement rate are required to spend at least seventy-five percent of the reimbursement rate increase to improve direct care worker wages.[109] "The remaining twenty-five percent may be retained by the provider to cover the other employer related costs of providing direct care services, including payroll taxes, benefits, and paid time for nondirect services such as paid time off and training."[110]

g. Accountability

Each provider that receives the reimbursement rate increase must provide a written notification of its "plan to increase wages" to the Office of the Secretary.[111] Providers shall maintain all books, documents, papers, accounting records, and other evidence required to support the reporting of payroll information for increased wages to direct care staff.[112] These materials must be available at provider offices at all reasonable times and for three years from the date of final payment for the services for inspection by the state or its authorized designees.[113] Providers shall furnish copies at no cost to the state if requested.

The Office of the Secretary may recoup all or a part of the amount paid using the increased reimbursement rates based upon an audit or review of the supporting documentation, if the provider cannot provide adequate documentation to support the increased wages to direct care staff.[114]

h. Continuity

The WPT law is still in effect, but the reimbursement percentage increase remains the same.[115] The statue notes if the Centers for Medicare and Medicaid Services denies the Medicaid waiver amendments, rate increases may not be granted.[116]

i. Notice

Applicable providers were required to provide written and electronic notification of their "plan[s] to increase wages" to the secretary "within thirty (30) days after the office implements an increase in reimbursement rates."[117]

Additionally, the statue notes that the state shall file Medicaid waiver amendments related to rate increases and Medicaid waiver caps on or before September 30, 2017, with the earliest possible effective date allowed by the Centers for Medicare and Medicaid Services.[118]

[109] Indiana Code, I.C. § 12-15-1.3-18(d) (2017).
[110] Indiana Code, I.C. § 12-15-1.3-18(g) (2017).
[111] *Id.*
[112] Indiana Code, I.C. § 12-15-1.3-18(h) (2017).
[113] *Id.*
[114] Indiana Code, I.C. § 12-15-1.3-18(i) (2017).
[115] *Id.*
[116] Indiana Code, I.C. § 12-15-1.3-18(j) (2017).
[117] Indiana Code, I.C. § 12-15-1.3-18(e) (2017).
[118] Indiana Code, I.C. § 12-15-1.3-18(j) (2017).

7. IOWA

a. Date Current Program Started

The program started in 2009.[119] The WPT program was created through a Quality Assurance Trust Fund, which collects assessment taxes from nursing facilities and holds them separate from the state's general fund to increase compensation for direct care workers.[120] Additionally, the state relies on federal government matching funds.[121] The WPT law was created by statutes and regulations.

b. Type of WPT

The WPT law designates a **trust fund to be** used to increase wages/benefits. Money for the trust fund comes from: (1) quality assurance assessment taxes paid by nursing facilities; [122] (2) federal matching funds; (3) yearly accrued interest; and (4) any other monies allocated by the legislature.[123]

The whole scheme hinges upon the federal government agreeing to match the amount of money being received as quality assurance assessment taxes. If the federal government decided to no longer provide matching funds or participate, then the Quality Assurance Trust Fund would be dissolved.[124] Furthermore, if a court ruled that the quality assurance assessment tax could no longer be collected, the state would calculate Medicaid rates without a pass-through or add-on and dissolve the fund.[125]

c. Size of Increase

Unclear. Nursing facilities receive money from the fund in the form of either: (1) a quality assurance pass-through; (2) a quality assurance add-on; or (3) extra funds.[126] The quality assurance pass-through is added on to the set Medicaid per diem reimbursement rate.[127] The amount added on depends on how much money is in the Quality Assurance Trust Fund during that year.[128] In 2019, $58,570,397 was moved from the trust fund to be used to pay nursing facilities[129] and the quality assurance rate add-on contributed an additional $15 per patient day to the Medicaid per diem reimbursement rate.[130]

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[119] 2009 Ia. Legis. Serv. Ch. 160 (S.F. 476) (2009). The statute was most recently amended in 2019. Iowa Code Annotated § 249L.4 (2018).
[120] *Id.*
[121] Iowa Administrative Code §441-81.6(249A), §(21e); (2019).
[122] Iowa Administrative Code §441-36.7(249L) (2019).
[123] Iowa Code Annotated §249L.4 (2018).
[124] Iowa Administrative Code §441-81.6(249A), §(21e) (2019).
[125] *Id.*
[126] *Id.*
[127] *Id.*
[128] *Id.*
[129] 2019 Iowa House File 766; §36 (2019).
[130] *Id.*

d. Equity

The increase applies to direct care workers employed in a nursing facility.[131] Direct care workers are defined as employees of a nursing facility who hold a nursing assistant certification, are employed for the purpose of nursing assistance, and provide direct care to residents, regardless of the employee's job title.[132]

e. Universality

Mandatory.[133] That statute says that the assessment will be imposed uniformly upon all nursing facilities unless otherwise provided.[134]

f. Specificity

At least 35 percent of the money from the pass-through and add-on must be used to increase compensation and costs of employment for direct care workers.[135]

If the sum of the quality assurance assessment pass-through and add-on are greater than the total amount paid by the nursing facility to cover the quality assurance assessment, then the remainder can by kept by the nursing facility.[136] However, at least 35 percent of that remainder must be used to increase compensation and costs of employment for direct care workers.[137]

Additionally, no less than 60 percent of the total must be used to increase compensation and costs of employment for all nursing facility staff.[138] The money must be used to increase compensation and costs of employment (i.e. starting hourly wages, average hourly wages paid, and total wages including both productive and nonproductive wages, etc.) for direct care workers, but cannot be used to compensate nursing facility administrators, administrative staff, or home office staff.[139]

[131] Iowa Code Annotated §249L.2 (2019).
[132] *Id.*
[133] Iowa Code Annotated §249L.3 (2018).
[134] *Id.*
[135] Iowa Code Annotated § 249L.4 (2018).
[136] Iowa Administrative Code §441-81.6(249A), §(21); (2019).
[137] *Id.*
[138] *Id.*
[139] *Id.*

g. Accountability

As a condition of accepting the quality assurance pass-through and add-on, nursing facilities are required to submit Form 470-4829 (Nursing Facility Medicaid Enhanced Payment Report) to the state.[140] The form is meant to demonstrate to the state that the nursing facility is complying with the pass-through and add-on requirements. The nursing facility is also required to keep three years of books and records to show that they have paid and used the quality assurance assessment properly.[141] The state can also perform an audit at any time to ensure the nursing home is in compliance with the rules.

h. Continuity

The statute does not explicitly state whether the trust fund money will be distributed every year.[142] However, in practice, that is what has happened. If the federal government decided to no longer match funds or participate, then the quality assurance trust fund would be dissolved.[143] Furthermore, if a court ruled that the quality assurance assessment could no longer be collected, the state would dissolve the fund.[144]

i. Notice

The original WPT law provided few details regarding notice and how much time was needed to implement the trust fund operations. The Act becomes effective immediately as long as the federal government accepts the fund matching waiver.[145] The Act was passed on May 26, 2009, and the legislature directed the Department of Human Services to implement it no later than June 30, 2009.[146] Since then, no other time frames have been provided.

[140] Iowa Administrative Code §441-81.6(249A), §(21) (2019).
[141] *Id.*
[142] Iowa Code Annotated §249L.4 (2018).
[143] Iowa Administrative Code §441-81.6(249A), §(21e) (2019).
[144] *Id.*
[145] 2009 Iowa Legislative Service Chapter 160 (S.F. 476) (2009).
[146] *Id.*

8. KANSAS

a. Date Current Program Started

The program started in 1999.[147] The law was amended in 2011 and 2014.[148] The WPT law was created by statutes and regulations.

b. Type of WPT

The WPT law designates **some dollar amount to be added** to wages/benefits for those employees providing direct care and support services to residents of nursing facilities during the reimbursement period in which the pass-through wage payment costs are incurred.[149]

c. Size of Increase

Nursing facilities can request up to an extra $4 per resident day increase to reimbursement rates in their application to participate in the program.[150] Whether they receive 100% of their request depends on the amount allocated in appropriations and when the application is submitted.[151] Applications submitted before the primary deadline receive 100% of their request if the total amount requested by the applicants is less than the amount appropriated. If the total dollar amount of all requests is between 100-133% of available funding, all providers will receive a prorated deduction to bring total amount down to funding limit.[152] If the total dollar amount of all requests exceeds 133%, a random selection of applicants receives 100% of their request until the total dollar amount reaches the funding limit.[153] If the total amount of requests for primary group applications is below available funding, then the secondary group of applications are considered on a first come, first serve basis.[154]

d. Equity

The increase applies to residential direct care workers. Specifically, the increase is for: nurse aides, medication aides, restorative-rehabilitation aides, licensed mental health technicians, plant operating and maintenance personnel, nonsupervisory dietary personnel, laundry personnel, housekeeping personnel and non-supervisory activity staff.[155]

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[147] 18 KS. REG. 25 (June 24, 1999) p. 926.
[148] KS STAT. ANN. Chap. 39, § 971 (2014).
[149] KS STAT. ANN. Chap. 39, § 971(a) (2014).
[150] *Id.*; 18 KS. REG. 25 (June 24, 1999) p. 926.
[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *Id.*
[155] KS STAT. ANN. Chap. 39, § 971(a) (2014).

e. Universality
Optional.[156]

f. Specificity
The law provides not more than an extra $4 per resident day to increase salaries or benefits, or both.[157]

g. Accountability
Nursing facilities participating in the WPT program are required to submit quarterly wage audits.[158] The quarterly wage audits require facilities to submit cost information within 45 days of the end of each quarter reporting on the use of the wage pass-through payment under the quality enhancement wage pass-through program.[159] This quarterly wage audit process shall be used to assure that the wage pass-through payment was used to increase salaries and benefits to direct care and other support staff *or* to hire additional staff that fall into the eligible personnel categories specified in this subsection.

No wage pass-through money shall be expended to increase management compensation or facility profits.[160] A nursing facility participating in the quality enhancement wage pass-through program which fails to file quarterly enhancement audit reports shall be terminated from the program and shall repay all amounts that the nursing facility has received under the quality enhancement wage pass-through program for that reporting period.[161]

h. Continuity
Unclear.

i. Notice
The timelines for legislative appropriations and Medicaid rate setting are slightly off. The fiscal year for the State of Kansas is July 1st through June 30 while the Medicaid rate setting process occurs between June 2 and September 1st. The rates then take effect between September 1st and June 30th, which coincides with the end of the fiscal year for Kansas. While the facilities have 2 months to review and comment on the proposed methodology, rate and justifications published in the Kansas Register, they only have 2 weeks to complete the application to be included in the primary group.

[156] KS STAT. ANN. Chap. 39, §§ 971(a) and (b) (2014).
[157] KS STAT. ANN. Chap. 39, § 971(a) (2014).
[158] KS STAT. ANN. Chap. 39, § 971(c) (2014).
[159] *Id.*
[160] KS STAT. ANN. Chap. 39, § 971(d) (2014).
[161] *Id.*

9. LOUISIANA

a. Date Current Program Started

The program started in 2000.[162] The WPT program was created through a trust fund called the Medicaid Trust Fund for the Elderly that collects funds through legislative allocations and accrued interest for the purpose of enhancing wages for direct care personnel.[163] The WPT law was created by statutes.

b. Type of WPT

The WPT law designates a **trust fund to be** used to increase wages/benefits. The money used for wage increases primarily comes from profits from investments during the previous year.[164] This means that some years the amount will be higher and some years no money will be passed on to nursing homes. Even if there is money, there are competing interests in how it should be spent, meaning that the amount directed to wage enhancements could be low even in a good year.

c. Size of Increase

Unclear. The statute only specifies that earnings and investments from the fund may be used to enhance wages for direct care personnel working in Medicaid certified nursing homes.[165] This would suggest that the amount that is used for wage enhancement changes year to year, depending upon the dividends earned through the trust's investments. The State Treasurer is required to prepare and submit an annual report to the director of the Department of Health detailing how the fund performed the previous year.[166]

d. Equity

The increase applies to residential direct care workers. Specifically, it applies to direct care personnel working in Medicaid certified nursing homes.[167] Secondary sources include *skilled nursing facilities* in the certified nursing home definition.[168]

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[162] Louisiana Statutes Annotated – Revised Statutes. 46;2691 Trust Fund for the Elderly; (2014). The statute was most recently amended in 2014.

[163] At one point, the state also had another WPT law that was directed at reimbursement for nursing facilities. The plan came under the State Plan Under Title XIX of the Social Security Act, Medical Assistance Program and required that on or after February 9, 2007, a facility-specific direct care rate would be increased by $4.70 per day for direct care staff wage enhancements. State of Louisiana; METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - NURSING FACILITY SERVICES AND INTERMEDIATE CARE FACILITY SERVICES FOR THE MENTALLY RETARDED; Payment for Medical and Remedial Care and Services; 1996. http://ldh.la.gov/assets/medicaid/StatePlan/Sec4/Attachment419D1PaymentsforSkilledNursingFacilities.pdf. However, after July 3, 2009, the wage enhancement was reduced over the course of the next year and eliminated by July 1, 2010. *Id.*

[164] Louisiana Statutes Annotated – Revised Statutes. 46;2691 Trust Fund for the Elderly (2014).

[165] Id.; HHS; *State Efforts to Address Nursing Home Staffing Shortages;* Nursing Home Quality Initiatives; 2000. https://www.gao.gov/new.items/he00197.pdf

[166] Louisiana Statutes Annotated-Revised Statutes. 46;2691 Trust Fund for the Elderly; (2014).

[167] Louisiana Statutes Annotated-Revised Statutes. 46;2691 Trust Fund for the Elderly; (2014).

[168] U.S. Department of Health and Human Services. STATE WAGE PASS-THROUGH LEGISLATION: AN ANALYSIS, (2002). Retrieved from https://aspe.hhs.gov/basic-report/state-wage-pass-through-legislation-analysis

e. Universality
Unclear.

f. Specificity
The fund statute states that earnings on investments from the fund must be used for services of the state Medicaid program. It lists those services in order of spending priority. [169] Providing a wage enhancement for direct care personnel is the highest priority on the list.[170] It also directs that the money be used according to the plan established by the Louisiana Department of Health and representatives of the nursing facility industry.[171]

g. Accountability
Unclear. The state materials and secondary materials do not specify an enforcement system to ensure compliance for the fund.

h. Continuity
The fund was designed to provide an undetermined annual wage enhancement, depending on the earnings of the fund's investments. Unless the statute is changed, funds will continue to be distributed each fiscal year.[172]

i. Notice
Unclear. The fund statue does not provide a timetable of when the money for the wage enhancement should be put in place.

[169] Louisiana Statutes Annotated-Revised Statutes. 46;2691 Trust Fund for the Elderly; (2014)
[170] *Id.*
[171] *Id.*
[172] *Id.*

10. MAINE

a. Date Current Program Started

The program started in 1999, with a "one-time supplemental payment to nursing facilities."[173] Since that time, Maine has a passed a number of WPT laws.[174] The WPT laws were created through appropriation bills and regulations.[175]

b. Type of WPT

The WPT law designates a **certain percentage of a reimbursement rate increase** be used for wages/benefits. The 1999 and 2015 WPT laws were appropriation bills.[176] The 2018 WPT law[177] was implemented through emergency rulemaking and a manual.[178] It went into effect on November 11, 2018.[179]

c. Size of Increase

Only the amount of Maine's appropriation is provided in the 1999 WPT law, which was $1,250,000.[180]

The 2015 WPT law notes the rate for attendant care services is set at $2.93 per 15 minutes, which was effective October 15, 2015. That amount was increased to $3.33 for the time period of July 29, 2016 to February 21, 2017.[181]

In the 2018 WPT law, the reimbursement rate for nursing facilities is increased "by an amount equal to 10% of wages and associated benefits and taxes as reported on each facility's as-filed cost report for its fiscal year ending in calendar year 2016," which must be added to cost per resident day in calculating each facility's prospective pay rate.[182]

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[173] 1999 Bill Text ME H.B. 454; STATE EFFORTS TO ADDRESS NURSING HOME STAFFING SHORTAGES, NORTH CAROLINA DIVISION OF FACILITY SERVICES (1999), GAO/HEHS-00 -197.

[174] E.g., RESULTS OF A FOLLOW-UP SURVEY TO STATES ON WAGE SUPPLEMENTS FOR MEDICAID AND OTHER PUBLIC FUNDING TO ADDRESS AIDE RECRUITMENT AND RETENTION IN LONG-TERM CARE, NORTH CAROLINA DIVISION OF FACILITY SERVICES (Nov 4, 2000); 2015-2016R Maine H.P. 920; 2018S1 Enacted Maine H.P. 653 2018S1 (2018).

[175] 1999 Bill Text ME H.B. 454; 2015-2016R Maine H.P. 920. The 2015 WPT law also had an accompanying MaineCare manual. *See* Chapter 101: MaineCare Benefits Manual, Chapter III, Section 12 (2019).

[176] *Id.*

[177] 2018S1 Enacted Maine H.P. 653 2018S1 (2018).

[178] Maine Emergency Rulemaking: Mainecare Benefits Manual, 10-144 Dept. of Health & Hum. Servs. Chapter 101, Section 97: Appendix C 2400.9 & Main Rule 2400.5 (2018). 2400.5 and 2400.9 are substantially the same. *Id.*

[179] Mainecare Benefits Manual, 10-144 Dept. of Health & Hum. Servs. Chapter 101, Section 97: Appendix C 2400.9 & Main Rule 2400.5 (2018).

[180] 1999 Bill Text ME H.B. 454.

[181] 2015-2016R Maine H.P. 920; Chapter 101: MaineCare Benefits Manual, Chapter III, Section 12 (2019).

[182] 2018S1 Enacted Maine H.P. 653 2018S1 Sec. B-3 (2018); ME Emergency Rulemaking: Mainecare Benefits Manual, 10-144 Dept. of Health & Hum. Servs. Chapter 101, Section 97: Appendix C 2400.9 & Main Rule 2400.5 (2018).

d. Equity

The law applies to both residential and community-based direct care workers.

The 1999 WPT law states that the wage increase goes to "nonadministrative staff" in nursing facilities.[183]

Under the 2015 WPT law, the increase goes to workers providing attendant care services as defined by the Medicaid Home and Community Based Service Manual, Chapter III.[184]

In the 2018 WPT law, the wage increase is only for residential private non-medical institution providers (PNMI), including: licensed practical nurses, clinical consultant services, and personal care services.[185]

e. Universality

The 1999 WPT law is unclear whether provider participation is optional or mandatory.[186]

The 2015 WPT law, seems to make participation mandatory.[187]

The 2018 WPT law provides that, "providers *must ensure* that the increase in reimbursement rates effective August 1, 2018 is applied".[188] Thus, participation seems to be mandatory for applicable providers.

[183] 1999 Bill Text ME H.B. 454.
[184] 2015-2016R Maine H.P. 920; Chapter 101: MaineCare Benefits Manual, Chapter III, Section 12 (2019).
[185] ME Emergency Rulemaking: Mainecare Benefits Manual, 10-144 Dept. of Health & Hum. Servs. Chapter 101, Section 97: Appendix C 2400.9, Appendix F 2400.1 & 2400.3, Main Rule 2400.5 (2018).
[186] 1999 Bill Text ME H.B. 454.
[187] 2015-2016R Maine H.P. 920; Chapter 101: MaineCare Benefits Manual, Chapter III, Section 12 (2019).
[188] (emphasis added). ME Emergency Rulemaking: Mainecare Benefits Manual, 10-144 Dept. of Health & Hum. Servs. Chapter 101, Section 97: Appendix C 2400.9 & Main Rule 2400.5 (2018).

f. Specificity

Unclear. In the 1999 WPT law, funds should be used "for the purpose of addressing the problem of recruitment and retention of nonadministrative staff."[189]

The 2015 WPT law is less specific. It only discusses the reimbursement rate increase.[190]

The 2018 WPT law says that the funds must be used to increase wages and benefits for applicable DCWs.[191]

g. Accountability

The 1999 and 2105 WPT laws and manuals are unclear about enforcement and accountability.[192]

In the 2018 law, providers are required to demonstrate compliance "in their financial records"—that they are using the increased reimbursement to increase the wages and benefits of direct care workers.[193] The providers must "provide documentation to the Department upon request."[194] These providers are be subject to fines or be cut off from reimbursement if they failed to comply.[195]

h. Continuity

The 1999 and 2018 WPT laws, specifically stated that the increase was a "one-time supplemental payment."[196] Comparatively, the 2015 WPT law was an adjustment for two years—with continuity based on further appropriations.[197]

[189] 1999 Bill Text ME H.B. 454.
[190] 2015-2016R Maine H.P. 920.
[191] ME Emergency Rulemaking: Mainecare Benefits Manual, 10-144 Dept. of Health & Hum. Servs. Chapter 101, Section 97: Appendix C 2400.9 & Main Rule 2400.5 (2018).
[192] 1999 Bill Text ME H.B. 454.
[193] ME Emergency Rulemaking: Mainecare Benefits Manual, 10-144 Dept. of Health & Hum. Servs. Chapter 101, Section 97: Appendix C 2400.9 & Main Rule 2400.5 (2018).
[194] *Id.*
[195] *Id.*
[196] 1999 Bill Text ME H.B. 454; ME Emergency Rulemaking: Mainecare Benefits Manual, 10-144 Dept. of Health & Hum. Servs. Chapter 101, Section 97: Appendix C 2400.9 & Main Rule 2400.5 (2018); 2018S1 Enacted Maine H.P. 653 2018S1 (2018).
[197] 2015-2016R Maine H.P. 920.

i. Notice

All of the WPT laws are unclear about how much notice nursing facilities had for education and implementation.[198] The 2018 WPT law provided a compliance date of August 1, 2018.[199]

[198] 1999 Bill Text ME H.B. 454; 2015-2016R Maine H.P. 920; Chapter 101: MaineCare Benefits Manual, Chapter III, Section 12 (2019); *See* ME Emergency Rulemaking: Mainecare Benefits Manual, 10-144 Dept. of Health & Hum. Servs. Chapter 101, Section 97: Appendix C 2400.9 & Main Rule 2400.5 (2018); 2018S1 Enacted Maine H.P. 653 2018S1 (2018).

[199] *See* ME Emergency Rulemaking: Mainecare Benefits Manual, 10-144 Dept. of Health & Hum. Servs. Chapter 101, Section 97: Appendix C 2400.9 & Main Rule 2400.5 (2018); 2018S1 Enacted Maine H.P. 653 2018S1.

11. MASSACHUSETTS

a. Date of Current Program Started

The program started in 2001 with an appropriations bill that set aside money for the purpose for funding base hourly wage increases for certified nurses' aides at nursing facilities.[200] A version of this funding provision has been included in every appropriations bill since 2001. The state has also passed reimbursement rate add-ons. The WPT laws were created by appropriation bills and regulations.

b. Type of WPT

The WPT law designates that a **certain percentage of a reimbursement rate increase** be used for wages. The original appropriations bill set aside $40,000,000 for the purpose of funding base hourly wage increases for certified nurses' aides at nursing facilities.[201] The most recent version, 2019 Bill Text MA H.B. 4000; §0641, set aside $38,300,000 to fund wages related to direct care staff of nursing homes, certified nurses' aides, and housekeeping, laundry, dietary, and activities staff.[202]

Additionally, regulations were adopted that designate **some dollar amount to be added** to wages. Specifically, 101 CMR, § 411.03 (2018), provides supplemental reimbursement add-on rates for certain placement, support, and shared living services.[203] The rates are per hour and rise from $17.59 to $17.93 for shared living services from February 2018 to July 2018.[204]

c. Size of Increase

For the fiscal year 2020, the appropriations bill provides $38,300,000 for add-on wages for direct care staff in nursing homes.[205] This amount is similar to other totals that have been allocated since 2001.[206]

From the appropriation bill, the payment to a nursing home is calculated by taking the total amount appropriated for the fiscal year, calculating the difference between the total and the total payments given during the previous fiscal year.[207] The previous fiscal year's total is then divided by the previous fiscal year's total direct care staff payments for all providers, then multiplied by the difference between the current and previous year's totals. Finally, each provider's total from the previous year is added with the share of the difference calculated above. Payments given to the providers are given in three installments throughout

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[200] 2001 Bill Text Massachusetts House Bill 4800; §4000-0600 (2001).
[201] *Id.*
[202] 2019 Bill Text Massachusetts House Bill 4000; §0641, (2019).
[203] Code of Massachusetts Regulations Title 101, § 411.03 (2018). This regulation was adopted in 2013 and amended in 2019.
[204] *Id.*
[205] 2019 Bill Text Massachusetts House Bill 4000; §0641(2019).
[206] 2001 Bill Text Massachusetts House Bill 4800; §4000-0600 (2001); U.S. Department of Health and Human Services . STATE WAGE PASS-THROUGH LEGISLATION: AN ANALYSIS, (2002). Retrieved from https://aspe.hhs.gov/basic-report/state-wage-pass-through-legislation-analysis
[207] Code of Massachusetts Regulations Title 101, § 206.06 (2019).

the year.[208] There is also a direct care staff add-on rate of $17.93 for certain placement, support, and shared living services.[209]

d. Equity

The increase applies to residential direct care workers. Specifically, it applies to workers providing services in placement, support, and shared living services.[210] The appropriated funds can be used to supplement the wages of direct care staff of nursing homes (including registered nurses and licensed practical nurses), certified nurses' aides, social workers, and housekeeping, laundry, dietary and activities staff. The funds cannot be spent on temporary nursing services, contract employees, or directors of nursing.[211]

e. Universality

Secondary materials state that the enacted wage pass-through provisions should be mandatory for all providers.[212] However, this is not mentioned in the text of the statutes or the regulations.

f. Specificity

Allocated funds must be used to increase wages, benefits, and related employee costs for allowed direct care staff.[213] Specifically, hourly wage increases, shift differentials, or bonuses should be prioritized, and the funds can also be used for overtime payments and bonuses. However, spending for temporary nursing services, contract employees, and directors of nursing is not allowed.[214]

g. Accountability

The 2001 WPT law, $200,000 was set aside for conducting audits of wage increases to ensure that the funds were being used appropriately.[215] The section listed consequences for failure to comply with the section, including recouping 150 percent of any funds appropriated for wage increases that were expended for a purpose other than increasing the base hourly wages, and paying out 150 percent of underpayments to certified nurses' aides for the calendar year of the underpayments based on total hours worked for the entire calendar year.[216]

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[208] Code of Massachusetts Regulations Title 101, § 206.06 (2019).
[209] Code of Massachusetts Regulations Title 101, § 411.03 (2018).
[210] *Id.*
[211] Code of Massachusetts Regulations Title 101, § 206.06 (2019); 2019 Bill Text Massachusetts House Bill 4000; §0641, (2019); Administrative Bulletin 18-24; (2018); U.S. Department of Health and Human Services. STATE WAGE PASS-THROUGH LEGISLATION: AN ANALYSIS, (2002). Retrieved from https://aspe.hhs.gov/basic-report/state-wage-pass-through-legislation-analysis
[212] U.S. Department of Health and Human Services. STATE WAGE PASS-THROUGH LEGISLATION: AN ANALYSIS, (2002). Retrieved from https://aspe.hhs.gov/basic-report/state-wage-pass-through-legislation-analysis
[213] 2019 Bill Text Massachusetts House Bill 4000; §0641, (2019); Administrative Bulletin 18-24; (2018).
[214] 2019 Bill Text Massachusetts House Bill 4000; §0641, (2019); Administrative Bulletin 18-24; (2018).
[215] 2001 Bill Text Massachusetts House Bill 4800; §4000-0600 (2001).
[216] 2001 Bill Text Massachusetts House Bill 4800; §4000-0600; (2001).

The current law is not as specific.[217] However, an informational bulletin published by the Executive Office of Health and Human Services in 2018 reveals that facilities are required to submit data regarding their direct care staff payments and complete a compliance form.[218]

If a facility fails to spend the full amount or spends the money improperly, then the facility is assessed a penalty of 25 percent of the unspent/improperly used amount, and the facility has 30 days to issue a one-time bonus to employees in the amount of the unspent funds.[219] If the bonus is not given within the 30 days, then the state will recoup the whole amount of unspent/improperly used funds from the facility, plus a 25 percent penalty. In addition to this, if the facility fails to submit their final compliance form on time, then the entire allotment of funds will be considered unspent.[220]

The rate add-on regulations do not include accountability or enforcement provisions.

h. Continuity

The WPT law has been in every annual appropriations bill since 2001.

i. Notice

Unclear. MassHealth, the state Medicaid program, is required to distribute the funds and carry out the requirements of the current WPT law by May 1, 2020.[221] The facilities have the fiscal year to spend the appropriated money on approved items.[222] The rate add on regulations do not provide notice information.

[217] 2019 Bill Text MA H.B. 4000; §0641, (2019).
[218] Administrative Bulletin 18-24; (2018).
[219] 2019 Bill Text Massachusetts House Bill 4000; §0641, (2019); Administrative Bulletin 18-24; (2018).
[220] Administrative Bulletin 18-24; (2018).
[221] 2019 Bill Text MA H.B. 4000; §0641, (2019).
[222] *Id.*

12. MICHIGAN

a. Date Current Program Started

The program started in 1990.[223] The WPT law was created through appropriation bills. The last mention of the appropriation was in 2010.[224] In 2017, the state shifted to a quality assurance fund that did not specifically discuss wage pass through.[225]

b. Type of WPT

The WPT law designates **some dollar amount to be added** to wages, a percentage of coverage for benefits, and scholarship assistance for tuition.[226]

c. Size of Increase

The 1990 WPT law required that the starting wages for nurse assistants be no less than $4.75 per hour.[227] It also required that the nursing home pay 50% of single coverage for health insurance and 100% of sick and disability insurance and life insurance for all dietary, laundry, housekeeping, and nurse assistants.[228] In addition, the nursing home was required to provide at least $150 per employee per semester with a minimum of three scholarships available per semester.[229]

The 2006 WPT law, only discusses wage pass through payments, but mentions that it is continuing the WPT from previous years for fiscal year 2006-2007 without any decrease or increase.[230] The 2007 WPT law increases wage enhancements by 50 cents per employee hour and adds in that the increase can be used for employee benefits including, but not limited to health benefits, retirement benefits, and quality of life benefits such as day care services.[231] It also notes that the WPT from previous years continues.[232]

The 2009 WPT law mentions that it is continuing the WPT from previous years without any decrease or increase.[233] This was the last time that the WPT was mentioned.

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[223] MI H.B. 5484 (1990).
[224] MI S.B. 1152 (2009).
[225] MI H.B. 4323 (2017). The only wage pass through program that remains is connected to direct care workers providing behavioral health services. 2019 S.B. 139 (2019).
[226] MI H.B. 5484 (1990).
[227] *Id.*
[228] *Id.*
[229] *Id.*
[230] MI S.B. 1083 (2006).
[231] MI S.B. 1094 (2007). The WPT is separate from previously agreed to wage and benefit increases as a result of collective bargaining or standard step increases. *Id.*
[232] *Id.*
[233] MI S.B. 1152 (2009).

d. Equity

The increase applies to residential direct care workers. Specifically, it applies to dietary, laundry, housekeeping, and nurse assistants working in nursing homes.[234]

e. Universality

Optional. Nursing homes could apply to receive the increased reimbursement rate.[235]

f. Specificity

The nursing home has to use the funds to increase wages, subsidize benefits, or provide support for quality of life such as transportation, childcare, or tuition.[236]

g. Accountability

Nursing homes were required to submit an application demonstrating compliance and plan for each upcoming year.[237]

h. Continuity

The last mention of the appropriation was in 2010.[238] In 2017, the state shifted to a quality assurance fund that did not specifically discuss wage pass through.[239]

i. Notice

The 1990 WPT law was enacted July 26, 1990 and effective October 1, 1990.[240] Application for funding must be submitted by providers on November 1, 1990, and eligibility will be determined by December 31, 1990 for a full year's rate.[241]

[234] MI S.B. 1152 (2009).
[235] MI H.B. 5484 (1990).
[236] Id.; MI S.B. 1083 (2006); MI S.B. 1094 (2007); MI S.B. 1152 (2009).
[237] MI H.B. 5484 (1990).
[238] MI S.B. 1152 (2009).
[239] MI H.B. 4323 (2017). The only wage pass through program that remains is connected to direct care workers providing behavioral health services. 2019 S.B. 139 (2019).
[240] MI H.B. 5484 (1990).
[241] *Id.*

13. MINNESOTA

a. Date Current Program Started

The program started in 1999 and applied to skilled nursing facilities.[242] Currently, Minnesota has two WPT laws.[243] The WPT laws were created by statutes that went into effect on August 1, 2019.[244]

b. Type of WPT

The WPT law designates a **certain percentage of a reimbursement rate increase** be used for wages/benefits.

c. Size of Increase

Minnesota's 2019 Community First Services and Supports (CFSS) WPT law requires provider agencies to spend at least 72.5 percent of their reimbursement rate on CFSS direct care worker wages and benefits. In addition, CFSS direct care workers who receive certain training and who provide services to individuals who qualify for at least twelve hours of care per day are eligible for an enhanced rate of 107.5% of the standard CFSS direct care worker reimbursement rate.[245]

The 2019 Personal Care Assistance WPT law requires provider agencies to spend at least 72.5 percent of their reimbursement rate on personal care assistance (PCA) worker wages and benefits. In addition, PCA workers who receive certain training and who provide services to individuals who qualify for at least 12 hours of care per day are eligible for an enhanced rate of 107.5% of the standard PCA worker reimbursement rate.[246]

d. Equity

The increase applies to community-based direct care workers. Under the 2019 CFSS WPT law, the minimum spending requirement for wages and benefits applies to all CFSS direct care workers. The enhanced rate only applies to a subset of CFSS direct care workers, who receive certain training and who provide services to individuals who qualify for at least twelve hours of care per day.[247]

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[242] *State Efforts to Address Nursing Home Staffing Shortages*, GAO/HEHS-00 -197; *Results of a Follow-Up Survey to States on Wage Supplements for Medicaid and Other Public Funding to Address Aide Recruitment and Retention in Long-Term Care*, North Carolina Division of Facility Services (Nov. 4, 2000); *Results of the 2005 National Survey of State Initiatives on the Long-Term Care Direct-Care Workforce*, The National Clearinghouse on the Direct Care Workforce & The Direct Care Workers Association of North Carolina; *Workforce Strategies: State Wage Pass-Through Legislation: An Analysis*; Andrew D. Foster and Yong Suk Lee, *Staffing Subsidies and the Quality of Care in Nursing Homes* (June 12, 2013), https://web.williams.edu/Economics/wp/NHpaper-06122013.pdf. "[T]he legislation left it to the nursing facility to decide which employees to give the money to [for the first two years]." Also, this legislation subjected SNF's to audits of "distribution plans" for the funds. Id.

[243] MN ST § 256B.85 (2019) and MN ST § 256B.0659 (2019).

[244] *Id.*

[245] MN ST § 256B.85 (2019).

[246] MN ST § 256B.0659 (2019).

[247] MN ST § 256B.85 (2019).

Under the 2019 PCA WPT law, the minimum spending requirement for wages and benefits apply to all PCA workers. The enhanced rate only applies to PCA workers who receive certain training and who provide services to individuals who qualify for at least twelve hours of care per day.[248]

e. Universality

The enhanced rate and the minimum percentage of spending are mandatory under the CFSS WPT law and the PCA WPT law.[249]

f. Specificity

Both of the 2019 statutes, the CFSS WPT law and the PCA WPT law, are fairly specific in how providers should use the funds: on "wages and benefits" for applicable workers.[250]

g. Accountability

Providers must document that they will comply with the minimum spending for worker wages and benefits—at the time of enrollment in the programs and on an ongoing basis.[251] Additionally, the provider agency must document compliance with the enhanced rate (e.g., that the increased payment goes to DCW wages and benefits).[252]

h. Continuity

The minimum spending of the increased reimbursement rate on worker wages and benefits and the enhanced rate will remain in effect unless and until the laws are amended.[253]

i. Notice

Unclear.

[248] MN ST § 256B.0659 (2019).
[249] MN ST § 256B.85 (2019) and MN ST § 256B.0659 (2019).
[250] *Id.*
[251] *Id.*
[252] *Id.*
[253] *Id.*

14. MONTANA

a. Date Current Program Started

The program started in 2000.[254] Montana's most recent WPT laws are MT HB 618 (2017) and MT SB 261 (2017).[255] The WPT laws were created by appropriation bills and regulations.

b. Type of WPT

The WPT law designates **some dollar amount to be added** to wages/benefits.[256] The bills address wages of certified nursing assistants (CNAs) working in Medicaid Nursing Facilities[257] and wages for direct care workers who provide care under the home and community-based services waivers.[258]

c. Size of Increase

For CNA's working in Medicaid Nursing Facilities, hourly wages were increased by $0.50 though an appropriation.[259] For direct-care workers who provide home and community-based services and for community services personal care assistants, hourly wages were increased by $1.50 through an appropriation.[260]

d. Equity

The increase applies to both residential and community-based direct care workers.

e. Universality

Montana's WPT laws are optional. In order to take part in the WPT program, providers must submit a form to the Department of Public Health & Human Services explaining how the funds will be used to increase compensation.[261]

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[254] 1999 Bill Text MT H.B. 2 (appropriation); ARM 37.40.361 (2004) (regulation—originally enacted in 1999). These laws were discovered through two secondary sources: Nursing Home Quality Initiatives, GAO/HEHS-00-197; Results of the 2005 National Survey of State Initiatives on The Long-Term Care Direct-Care Workforce, National Clearinghouse on the Direct Care Workforce & The Direct Care Workers Association of North Carolina.

[255] For Developmental Disability and Home and Community Based direct-care workers.

[256] MT HB 618 (2017) and MT SB 261 (2017); ARM 37.40.1415 (2019); ARM 37.40.1027 (2019); ARM 37.40.361 (2019); ARM 37.40.422 (2019).

[257] MT HB 618 (2017).

[258] MT SB 261 (2017).

[259] MT HB 618 (2017).

[260] MT SB 261 (2017). *See also* Sue O'Connell, Children, Families, Health, and Human Services Interim Committee, Final Report to the 66th State Legislature.

[261] ARM 37.40.1415 (2019); ARM 37.40.1027 (2019); ARM 37.40.361 (2019); ARM 37.40.422 (2019).

f. Specificity

The regulations are fairly flexible—providing that the WPT funds can be used to increase: (1) wages; (2) benefits; or (3) bonuses, stipends, "or other payment types"—through a lump sum payment to the provider.[262]

g. Accountability

Montana requires that providers submit a plan detailing how the funds will be used.[263] Providers who receive funds "must maintain appropriate records documenting the expenditure of the funds. This documentation must be maintained and made available to authorized governmental entities and their agents to the same extent as other required records and documentation under applicable Medicaid record requirements."[264]

h. Continuity

The WPT appropriation laws were enacted as one-time wage adjustments.[265]

i. Notice

The 2019 WPT laws were passed based on fiscal years 2018 and 2019.[266] However, the regulations seem to say that providers may obtain WPT funding any time a WPT law appropriation is in place, as long as they comply with application and reporting requirements.[267]

[262] ARM 37.40.1415 (2019); ARM 37.40.1027 (2019); ARM 37.40.361 (2019); ARM 37.40.422 (2019).
[263] *Id.*
[264] *Id.*
[265] *See* MT HB 618 (2017); MT SB 261 (2017).
[266] MT HB 618 (2017); MT SB 261 (2017); MT HB 638 (2017).
[267] ARM 37.40.1415 (2019); ARM 37.40.1027 (2019); ARM 37.40.361 (2019); ARM 37.40.422 (2019).

15. NEW JERSEY

a. Date Current Program Started

The program started in 2003.[268] The WPT program was created through the Nursing Home Quality of Care Improvement Fund Act in 2003[269] that was amended in 2004,[270] which imposes an assessment on nursing homes of which is dispersed for increasing recruitment and retention of employees and increasing the wages of caregivers. Also, some counties require a living wage[271] and the state limits overtime.[272] In 1999, Hudson County enacted its first Living Wage Ordinance, which was amended in 2002 and 2003 that required increased wages for all contractors who supply health service workers.[273] Finally, NJ enacted a Minimum wage bill that would raise the minimum wage to $15 by 2024, which applies to nursing homes.[274] The WPT laws were created by statutes and regulations.

b. Type of WPT

The WPT law designates a **trust fund to be** used to increase wages/benefits. The fund is comprised of: 1) revenues from assessments paid by nursing homes; 2) matching federal funds; 3) general fund revenues;[275] and 4) any interest or other income earned on monies deposited into the fund.[276]

The assessment shall not be payable by nursing homes until both the provider assessment and the plan for distribution of the proceeds of the fund are approved by the federal government, which occurred in 2005.[277] Thereafter, the assessment shall be payable after the end of each quarter during which the assessment accrues.[278] Each nursing home shall pay an assessment which, when combined with the aggregate amount of assessments paid by all other nursing homes pursuant to this section shall not exceed 6% of the aggregate amount of annual

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[268] NJSA § 26:2H-92 (2003).
[269] NJSA § 26:2H-92 (2003).
[270] 2004 Bill NJ AB §3051 (PL 2004, c.41).
[271] Visiting Homemaker Service of Hudson County v. Bd of Chosen Freeholders of County of Hudson, 380 N.J. Super. 596 (2005).
[272] NJSA § 34:11-56a31 (2003).
[273] Visiting Homemaker Service of Hudson County v. Bd of Chosen Freeholders of County of Hudson, 380 N.J. Super. 596 (2005).
[274] Jon Dolan, Long-Term Care Providers Need Help with New Minimum Wage (Feb. 26, 2019), https://www.njspotlight.com/2019/02/19-02-25-op-ed-long-term-care-providers-need-state-help-to-pay-new-minimum-wage/
[275] As soon after the collection of the monies from the assessment is practicable, the State Treasurer shall authorize the transfer to the General Fund of $12.875 million for each quarter for which the assessment has been collected, not to exceed $51.5 million on an annual basis. All of the amounts so transferred to the General Fund shall be allocated for the support of nursing home programs as the commissioner shall designate, provided that of those amounts, a sufficient amount shall be used to fund nursing home rates at State fiscal year 2003 levels or higher and the continued applicability of nursing home rebasing and bed hold payment methodologies in effect during fiscal year 2003. NJSA § 26:2H-97(a) (2004). Any disbursement of monies from the fund shall be used solely for Medicaid nursing home add-ons. NJSA § 26:2H-95(b) (2012).
[276] NJSA § 26:2H-95(a) (2012).
[277] NJ Department of treasury, OLR Research Report, https://www.cga.ct.gov/2005/rpt/2005-R-0280.htm
[278] NJSA § 26:2H-96 (d) (2004).

revenues received by all nursing homes.[279] The original per diem assessment rate was $11.89 in 2005.[280] Beginning July 1, 2019, the rate was $14.67 per non-Medicare day, which increased from $11.92.[281] This assessment shall be paid to the Director of the Division of Taxation in the Department of the Treasury.[282]

The monies collected from the nursing home provider assessment are statutorily transferred, through appropriation, to the General Fund and allocated for the support of nursing home programs designated by the Commissioner of Human Services. The remaining monies**,** after the transfer to the General Fund, along with any federal Medicaid funds received by the Commissioner, are distributed directly to qualifying nursing homes.[283]

c. Size of Increase

Unclear. The law requires the State Treasurer o distribute funds from the Nursing Home Quality Improvement Fund to nursing homes "to enhance the quality of care for the residents of those facilities, which may include training, recruitment and *improvement of wages* and benefits for nursing home direct care employees."[284]

[279] NJSA § 26:2H-96(a) (2004). Each nursing home shall pay to the director for deposit into the fund an amount for nursing home patient days, excluding Medicare patient days, up to the maximum limit allowed by law less any licensing or other fees which would be considered "health care-related taxes" as defined by 42 C.F.R. s.433.55, including, but not limited to, any fees established by the commissioner as permitted under law. NJSA § 26:2H-95(a)(2) (2012). The assessment paid under subsection a. of this section shall not include Medicare patient day revenues and receipts from Medicare certified beds. NJSA § 26:2H-96(b) (2004).

[280] NJ Department of treasury, OLR Research Report, https://www.cga.ct.gov/2005/rpt/2005-R-0280.htm

[281] NJ Department of the Treasury, Nursing Home Assessment Overview (8/02/2019), https://www.state.nj.us/treasury/taxation/nursing_over.shtml

[282] NJSA § 26:2H-96(a)(2) (2004). A nursing home that realizes a net financial gain or loss resulting from the payment of its assessment pursuant to Nursing Home Quality of Care Improvement Fund Act and the distribution of monies in the fund shall not pass through, as a charge or other cost to its residents or a third-party payer, any portion of its assessment paid pursuant to section 5 of this act. NJSA § 26:2H-100 (2003).

[283] NJ Department of the Treasury, Nursing Home Assessment Overview (8/02/2019), https://www.state.nj.us/treasury/taxation/nursing_over.shtml

[284] NJSA § 26:2H-97(c) (2004). Because the State was exempted nursing homes from their provider tax, they sought and received a Medicaid waiver from CMS. NJ Department of treasury, OLR Research Report, https://www.cga.ct.gov/2005/rpt/2005-R-0280.htm

d. Equity

The increase applies to residential direct care workers employed in a nursing facility.[285]

e. Universality

Mandatory.[286]

f. Specificity

Unclear. The WPT law is geared towards improving quality, so it can be used for training, recruitment, and *improvement of wages* and benefits for nursing home direct care employees."[287]

g. Accountability

All nursing homes were required to file quarterly reports on form HHA-100 with the NJ Division of Taxation and the Department of Health no later than 20 calendar days after the close of each quarter.[288] Nursing homes are required to file returns even if there are no receipts that are subject to the assessment for that quarter.[289]

h. Continuity

The "Nursing Home Quality of Care Improvement Fund" is a non-lapsing fund in the NJ Department of the Treasury.[290]

i. Notice

The latest notice was given on August 2, 2019. The law states that beginning immediately and continuing for a period of 24 months, any monies received by facilities pursuant to this bill that are expended in the furtherance of increasing recruitment and retention of employees and increasing the wages of caregivers shall not be subject to the nursing screen or direct patient care screens within the routine cost limits imposed by the nursing home rate setting regulations.[291]

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[285] NJSA § 26:2H-97 (2004).
[286] *Id.*
[287] NJSA § 26:2H-97(c) (2004).
[288] NJ Department of the Treasury, Notice of 2005 Nursing Home Provider Assessment, https://www.state.nj.us/treasury/taxation/pdf/regs/nha100cover.pdf
[289] NJ Department of the Treasury, Nursing Home Assessment Overview (8/02/2019), https://www.state.nj.us/treasury/taxation/nursing_over.shtml
[290] NJSA § 26:2H-95 (2003).
[291] NJSA § 26:2H-92(a) (2012).

16. NEW YORK

a. Date Current Program Started

The program started in 2011.[292] The WPT laws were created as part of statutes and regulations. This WPT law also works in conjunction with the state minimum wage statute.[293]

b. Type of WPT

The WPT law designates **some dollar amount to be added** to wages/benefits.

c. Size of Increase

The size of the wage increase includes the minimum wage, which for 2019 in New York City is $15.00/hour.[294] The benefit portion for New York City is $4.09, in addition to minimum wage.[295] In New York City for 2017, the benefit portion was split $1.69 in additional wages and $2.40 for supplemental wage.[296] For the counties of Nassau, Suffolk, and Westchester, the 2019 minimum wage is $13.00/hour.[297] For these counties, the benefit portion, in addition to the minimum wage required, is $3.22.[298] These benefit portions for both New York City and outside the city remain at their rates from 2016, as the statute states "for all periods on or after April first, two thousand sixteen".[299] These payments are only to be made for episodes of care reimbursed in whole or part by New York Medicaid.[300]

d. Equity

The increase applies to community-based direct care workers, specifically home care aides.[301] "Home care aide" means a "home health aide, personal care aide, home attendant, personal assistant performing consumer directed personal assistance services, or other licensed or unlicensed person whose primary responsibility includes the provision of in-home assistance with activities of daily living, instrumental activities of daily living or health-related tasks."[302] The home care aide may not be related to the individual or work as a home care aide on a casual basis.[303] The terms of the regulation state that "this will apply equally to services provided by home care aides regardless of the entity which employs them, such a home health agencies, long term home health care programs, managed care plans, or as employees of home care services agencies, limited licensed home care services agencies, or

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[292] New York Public Health § 3614-c generally (2019).
[293] *Id.*
[294] New York Labor § 652(1)(a) in conjunction with New York Public Health § 3614-c(3)(a)(iv).
[295] New York Public Health § 3614-c(3)(a)(iv) (2019).
[296] Medicaid Redesign Team, *Home Care Worker Wage Parity Minimum Rate of Total Compensation*, available at https://www.health.ny.gov/health_care/medicaid/redesign/mrt61/2017-10-31_ww_parity_min_nyc.htm
[297] NY LABOR § 652(1)(b).
[298] New York Public Health § 3614-c(3)(b)(iv) (2019).
[299] New York Public Health § 3614-c(3)(a)(iv) and New York Public Health §3614-c(3)(b)(iv) (2019).
[300] New York Public Health § 3614-c(9) (2019).
[301] New York Public Health §3614-c(1)(d) (2019).
[302] *Id.*
[303] *Id.*

the consumer directed personal assistance program."[304]

e. Universality
Mandatory.

f. Specificity
The regulation provides that the benefit portion can be paid in cash, or other benefits such as health, education, or pension benefits.[305] It can also be used for wage differentials, supplements instead of benefits and compensated time off. All of this will be determined by the Department of Public Health with consultation from the Department of Labor.[306]

g. Accountability
In terms of monitoring, "if a certified home health agency or long term home health care program elects to provide home care aide services through contracts with licensed home care services agencies or through other third parties, the certified home health agency or long term home health care program must obtain a written certification from the licensed home care services agency or other third party, on forms prepared by the department in consultation with the department of labor, which attests to the licensed home care services agency's or other third party's compliance with the terms of this section."[307] "Such certifications shall obligates the certified home health agency, long term home health care program, or managed care plan to obtain on a quarterly basis all information necessary to verify compliance with this statute."[308] However, this regulation, nor any other statute, regulation, or other source speaks of a home health service agency having to provide certification unless they contract with a home health agency or long term home health care program.

h. Continuity
The WPT law first passed in 2011 and continues until 2016 in the regulation. However, it is still effective as of this date. The New York City section of the statute states "for all periods after April 1st, 2016, the compensation would be $10 or the minimum wage, whichever was higher.[309]

i. Notice
The providers are made aware of the changes in the minimum wage on a yearly basis because of the minimum wage statute.[310] With respect to minimum rates of home care aide compensation, the commission will provide official notice at least 120 days prior to the effective date.[311]

[304] New York Public Health § 3614-c(4) (2019).
[305] New York Public Health § 3614-c(1)(h) (2019).
[306] *Id.*
[307] New York Public Health § 3614-c(6). (2019)
[308] *Id.*
[309] New York Public Health § 3614-c(3)(a)(iv) and New York Public Health § 3614-c(3)(b)(iv) (2019).
[310] New York Labor § 652.(1)(a) and New York Labor § 652.(1)(b) (2019).
[311] New York Public Health § 3614-c(7) (2019).

17. PENNSYLVANIA

a. Date Current Program Started

The program started in 2019. The WPT law was created by an appropriation and revision to the fiscal code.[312] The increase takes effect January 1, 2020.[313]

b. Type of WPT

The WPT law designates a **certain percentage of a reimbursement rate increase** be used for wages/benefits.

c. Size of Increase

The appropriation for the WPT law included sufficient funds for a 2% increase to the existing Office of Long-Term Living (OLTL) Home and Community Based Waiver Services Fee Schedule Rate for Procedure Code W1793--PAS (Agency) Services to provide for a wage increase for direct care workers providing *agency-directed* personal assistance services.[314]

d. Equity

The increase was for community-based direct care workers providing *agency-directed* personal assistance services.[315] Direct care worker is defined as: "a person who provides participant-directed services in a participant's home under a home care service program."[316] Specifically, increases were given to direct care workers who provide services under the following programs: 1) Community Health Choices; 2) Home and Community-Based Services; and 3) Attendant Care.[317]

e. Universality

Unclear, but it seems to be mandatory.

f. Specificity

Unclear, but says the increase is to provide for a wage raise for direct care workers providing *agency-directed* personal assistance services.[318]

g. Accountability

Unclear.

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[312] 72 P.S. §1729-J(3)(vii1-4) (2019).
[313] *Id.*
[314] *Id.*
[315] *Id.*
[316] 4 Pa. Code § 7a.111 (2015).
[317] *Id.*
[318] 72 P.S. §1729-J(3)(vii1-4) (2019).

h. Continuity
Unclear.[319]

i. Notice
The WPT law was enacted July 1, 2019 and rate increases become effective January 2020.[320]

[319] 72 P.S. §1729-J(3)(vii1-4) (2019).
[320] *Id.*

18. RHODE ISLAND

a. Date Current Program Started

The program started in 2001.[321] The WPT laws were created by appropriation bills and statutes.

b. Type of WPT

The WPT law designates a **certain percentage of a reimbursement rate increase** be used for wages/benefits.[322]

c. Size of Increase

For fiscal year 2002, the WPT law increased direct care worker compensation (wages and benefits) by 3.8%.[323] In 2018, a 10% increase in base pay was required for home health and personal care providers, while a 20% increase was required for nursing home and hospice providers.[324] In addition, 85% of increases received by providers for inflation between 2016 and 2019 must go to direct care worker wages and benefits.[325]

d. Equity

The increase applies to both residential and community-based direct care workers.[326] The 2002 WPT law focused on registered nurses, licensed practical nurses, certified nursing assistants, homemakers, and personal care attendants providing services as part of assisted living waiver programs home-based services.

e. Universality

Appropriations bills made the increase mandatory.[327]

f. Specificity

In 2002, the increase had to go toward compensation and benefits of direct care workers.[328] The increases tied to inflation have not always been required to go to direct care workers, but for the years that direct care workers were specified 85% of the increase had to go to compensation and benefits.[329]

g. Accountability

Providers are required to submit a certification of compliance to the department secretary at the end of the fiscal year. For the 2019 bill, the legislature requested that the Office of

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[321] RI H.B. 6100 (2001).
[322] *Id.*
[323] *Id.*
[324] 1956 R.I. GEN. LAWS § 40-8.9-9 (2019).
[325] RI H.B. 5151 (2019).
[326] RI H.B. 6100 (2001). The law specifically noted that it did not include those working for nursing homes or assisted living providers. Id. 1956 R.I. GEN. LAWS § 40-8.9-9 (2019) (community-based direct care workers); 1956 R.I. GEN. LAWS § 40-8-19 (2019) (nursing home direct care workers).
[327] RI H.B. 6100 (2001) and RI H.R. 5151 (2019).
[328] RI H.B. 6100 (2001).
[329] RI H.B. 5151 (2019); 1956 R.I. GEN. LAWS § 40-8.9-9 (2019); 1956 R.I. GEN. LAWS § 40-8-19 (2019).

Internal Audit conduct a vendor compliance audit review.[330]

h. Continuity

Increases have been treated as prospective base rate or inflation increases, providing continuity.[331]

i. Notice

Generally, appropriations bills have been passed in late June or early July, with increases to take effect October 1st of the same year. By July 31st of the following calendar year, the certification of compliance has been due to the administrative agency.[332] However, the 2002 fiscal year increase was to begin on July 1, 2001, even though the bill was not enacted until July 5, 2001.[333]

[330] S.J. Res. 0059, 2017 Gen. Assemb. Legis. Jan. Sess. (RI 2017).
[331] RI H.B. 6100 (2001); RI H.B. 5151 (2019); 1956 R.I. GEN. LAWS § 40-8.9-9 (2019) (community-based direct care workers); 1956 R.I. GEN. LAWS § 40-8-19 (2019) (nursing home direct care workers).
[332] RI H.B. 5151 (2019).
[333] RI H.B. 6100 (2001).

19. TEXAS

a. Date Current Program Started

The program started in 2000 and remains in effect.[334] The WPT law was created by statute and regulations.

b. Type of WPT

The WPT law designates a **certain percentage of a reimbursement rate increase** be used for wages/benefits. Texas requires that nursing homes maintain a higher number of direct care workers. If they submit this documentation, which is developed through a formula in the regulation, the nursing home receives a higher reimbursement rate. According to the Texas Department of Health and Human Services (HHSC), 85% of the revenue must go back to direct care worker compensation.[335]

c. Size of Increase

In order to determine **size of the wage increase**, there is a formula created in the regulation.[336] The regulation and formula is set out below:

> "(1) Determine the sum of recipient care costs from the direct care staff cost center in all nursing facilities included in the Texas Nursing Facility Cost Report database used to determine the nursing facility rates in effect on January 1, 2000 (hereinafter referred to as the initial database).[337]
>
> (2) Adjust the sum from paragraph (1) as specified in §355.108 of this title (relating to Determination of Inflation Indices) to inflate the costs to the prospective rate year.[338]
>
> (3) Divide the result from paragraph (2) by the sum of recipient days of service in all facilities in the initial database and multiply the result by 1.07. The result is the average direct care staff base rate component for all facilities.[339]
>
> (4) For rates effective September 1, 2009 and thereafter, to calculate the direct care staff per diem base rate component for all facilities for each of the RUG-III case mix groups and for the default groups, divide each RUG-III index from §355.307(b)(3)(C) of this title (relating to Reimbursement Setting Methodology) by 0.9908, which is the weighted average Texas Index for Level of Effort (TILE) case mix index associated with the initial database, and then multiply each of the resulting quotients by the average direct care staff base rate component from paragraph (3) of this subsection.[340]
>
> (5) The direct care staff per diem base rates will remain constant except for adjustments for inflation from paragraph (2). The Department of Health and Human Services (HHSC) may also recommend adjustments to the rates in accordance with §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs)."[341]

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[334] 1 Texas Administrative Code § 355.308(o)(1) (2019).
[335] *Id.*
[336] 1 Texas Administrative Code § 355.308(k) (2019).
[337] 1 Texas Administrative Code § 355.308(k)(1) (2019).
[338] 1 Texas Administrative Code § 355.308(k)(2) (2019).
[339] 1 Texas Administrative Code § 355.308(k)(3) (2019).
[340] 1 Texas Administrative Code § 355.308(k)(4) (2019).
[341] 1 Texas Administrative Code § 355.308(k)(5) (2019).

d. Equity

The wage increase applies to residential direct care workers. Specifically, it includes compensation for employee and contract labor Registered Nurses (RNs), including Directors of Nursing (DONs) and Assistant Directors of Nursing (ADONs); Licensed Vocational Nurses (LVNs), including DONs and ADONs; medication aides; and nurse aides performing nursing-related duties for Medicaid contracted beds.[342] Nursing facility administrators and assistant administrators are not included in the direct care staff cost center.[343]

e. Universality

Optional.[344] Specifically, "[f]acilities *choosing to participate* in the enhanced direct care staff rate agree to maintain certain direct care staffing levels above the minimum staffing levels described in paragraph (1) of this subsection."[345]

f. Specificity

The use of funds is flexible. The regulation, enacted in 1996 and still effective, states:

> "Compensation includes both cash and non-cash forms of compensation subject to federal payroll tax regulations. Compensation includes wages and salaries (including bonuses); payroll taxes and insurance; and benefits. Payroll taxes and insurance include Federal Insurance Contributions Act (old age, survivors, and disability insurance (OASDI) and Medicare hospital insurance); Unemployment Compensation Insurance; and Workers' Compensation Insurance." [346]

Furthermore, allowable compensation includes salaries and wages, direct care staff contract labor, payroll taxes, Workers' Compensation, and Employer-Paid Health Insurance.[347] Compensation will not include unrecovered cost of meals, uniforms, Hepatitis B vaccinations, mileage reimbursement, and job-related training reimbursements.[348]

g. Accountability

Nursing homes who have opted into the WPT program must submit Annual Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports.[349] These reports will include any information required by HHSC to implement this enhanced direct care staff rate.[350]

h. Continuity

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[342] 1 Texas Administrative Code § 355.308(a) (2019).
[343] 1 Texas Administrative Code § 355.308(a)(7) (2019).
[344] 1 Texas Administrative Code § 355.308 (2019).
[345] 1 Texas Administrative Code § 355.308(j) (emphasis added) (2019)
[346] 1 Texas Administrative Code § 355.103(b)(1) (2019).
[347]Texas Health and Human Services. Nursing Facility Enhanced Direct Care Staff Rate: Open Enrollment Webinar. 2019. Available at https://rad.hhs.texas.gov/sites/rad/files/documents/long-term-svcs/2019/2019-enroll-trng-ppt-nf.pdf
[348] *Id.*
[349] 1 Texas Administrative Code § 355.308(f)(2) (2019).
[350] 1 Texas Administrative Code § 355.308(g) (2019).

The WPT appears to be a one-time wage adjustment. However, it does account for inflation over time and the regulation is subject to adjustment by HHSC.[351]

i. Notice

Open enrollment for the WPT program will begin on the first day of July and end on the last day of that same July preceding the rate year for which payments are being determined.[352]

[351] 1 Texas Administrative Code § 355.308(k)(5) (2019).
[352] 1 Texas Administrative Code § 355.308(c) (2019).

20. WASHINGTON

a. Date Current Program Started

The original wage increase in 2001 that was mentioned in the HHS document increased the direct care component of Medicaid rates for nursing homes by forty-five cents per patient day to the direct care rate.[353] Additionally, funding was provided in the state budget to increase wages by 50 cents more per hour, increasing wages for those who made less than $10/hour.[354] The original wage pass-through created in 2002 in the HHS document was found to have little impact.[355] Most facilities preferred for wage increases for more employees than direct care workers, according to the 2002 survey.[356]

The current program started in 2006 and remains in effect as of June 7, 2018.[357] The WPT law was created by statute.

b. Type of WPT

The current WPT law is based on union negations with SEIU. The Washington Department of Health will establish a formula that will add an increase to home care agency workers that shall be used exclusively for improving the wages and benefits of those workers.[358] This includes involvement with the Caregiver Union (SEIU 775) in Washington to develop the formula and set a minimum wage for these workers.[359] These negotiations will occur on a biennial basis, with a raise set for 2021.[360]

c. Size of Increase

Unclear. It appears that the benefit is determined by negotiation with the caregiver union in Washington on a two-year basis. The statute states that the department shall create a formula that converts into a per-hour amount, excluding health benefits, that accounts for wages and benefits as well as labor rates.[361] Labor rates are determined through collective bargaining with the SEIU 775.[362] It appears that they have contracted for a base rate of $15.00 hour for 2017-2019, with raises to occur in 2021.[363]

d. Equity

The increase applies only to community-based direct care workers. Specifically, it applies to home care agency workers who provide direct care.[364] Direct care worker is defined as "a

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[353] Wage Increases for Nursing Homes Low-Wage Direct Care Workers Second Survey. May 3, 2002. Available at https://www.dshs.wa.gov/sites/default/files/SESA/legislative/documents/LWNH2.pdf

[354] *Id*. at 1.
[355] *Id.*
[356] *Id.* at 3.
[357] WA ST § 74.39A.310 (2018).
[358] WA ST § 74.39A.310.(1) and (2)(a). (2018)
[359] WA ST § 74.39A.530.
[360] Service Employees International Union, Caregiver Union 775. Available at http://seiu775.org/2019legsession/
[361] WA ST § 74.39A.310.(1) and (2)(a) (2018).
[362] WA ST § 74.39A.530.
[363] Service Employees International Union, Caregiver Union 775. Available at http://seiu775.org/2019legsession/
[364] WA ST § 74.39A.310(b)(2) (2018).

paid caregiver who provides direct, hands-on personal care services to persons with disabilities or the elderly requiring long-term care."[365]

e. Universality
Mandatory.[366]

f. Specificity
The guidelines are flexible. The formula *can include, "but not limited* to regular wages, benefit pay, taxes, mileage, and contributions to a training partnership."[367] The contribution for health care benefits can include "*but not limited to* medical, dental, and vision benefits."[368]

g. Accountability
Unclear. There is no information from other regulations, websites, or additional resources as to how home care agencies will be held accountable. Part of this issue with the lack of information about accountability is likely due to the caregiver unionization that has occurred in Washington.

h. Continuity
It appears that this is a continuous wage pass-through. Because of the unionization of direct care workers, it appears that the direct care workers' wages will change over time depending on the contract negotiated by the unions and implementation of the formula.[369]

i. Notice
The increase is determined on a biennium basis.[370] These negotiations between the state and the caregiver union appear to be set two years in advance.[371] For example, union negotiations occurred in 2017 and 2019.

[365] WA ST § 74.39.009 (1).
[366] WA ST § 74.39A.310 (2) (2018). "The per-hour amount *shall* be added to the statewide home care agency vendor rate." Id. The increase "*shall* be used exclusively for improving the wages and benefits of home care agency workers". *Id.*
[367] WA ST § 74.39A.310 (2)(a) (2018).
[368] WA ST § 74.39A.310 (3) (2018).
[369] WA ST § 74.39A.310 (1)(a)and (1)(b) (2018).
[370] WA ST § 74.39A.310 (2)(a) (2018).
[371] Service Employees International Union, Caregiver Union 775. Available at http://seiu775.org/2019legsession/

21. WISCONSIN

a. Date Current Program Started

According to the 2000 WPT document, Wisconsin used to have a **nursing home wage pass-through in the state budget starting in 1999**.[372] Based on this information, it appears that Wisconsin has continued this program for nearly 20 years, but it is unclear if it has continuously been implemented.

The current program started in 2017.[373] The WPT laws were created by appropriations bills.

b. Type of WPT

Unclear. The only document currently available that provides guidance is a website FAQ from the Wisconsin Department of Health Services.[374]

c. Size of Increase

Unclear. It is dependent on the Wisconsin Department of Health Services (DHS), the size of the budget appropriation, and the specific provider. "DHS will determine the specific quarterly amount each provider is eligible to receive.[375] DHS will calculate the amount as follows: DHS divides the funds into quarterly amounts, DHS divides the amount for each quarter by the total MCO (Managed care organizations) payments to direct care providers for the quarter."[376] DHS assumes all providers are participating in the initiative.[377] "Finally, DHS multiplies the percentage increase by the payments each provider received during that quarter from the Managed CO it contracts with."[378] The funding total provided in 2017 Wis. Act 59 included a $60.8 million provision for this initiative.[379]

d. Equity

The increase applies to residential and community-based direct care workers. The Wisconsin DHS website states that the wage increase will affect those facilities who provide "adult day care services, daily living skills training, habilitation services, residential care (adult family homes, community-based residential facilities, residential care complexes), respite care provided outside of a nursing home, and support home care services."[380] Direct care workers are defined as an employee who contracts with, or is an employee of, an entity that contracts with an MCO to provide covered services as mentioned above.[381] They must also provide one or more of the following services: "assisting with activities of daily living, administering a member's medications, providing personal care or treatment for a member, conducting

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[372] 2000 WPT document
[373] 2017 Wisconsin Act 59 (2017). Available at https://docs.legis.wisconsin.gov/2017/related/acts/59
[374] Wisconsin Department of Health Services. "FAQs: Direct Care Workforce Funding Initiative". (2019) Available at https://www.dhs.wisconsin.gov/medicaid/ltc-workforce-funding-faq.htm
[375] Wisconsin Department of Health Services. "FAQs: Direct Care Workforce Funding Initiative". (2019) Available at https://www.dhs.wisconsin.gov/medicaid/ltc-workforce-funding-faq.htm
[376] *Id.*
[377] *Id.*
[378] *Id.*
[379] *Id.*
[380] *Id.*
[381] Wisconsin Department of Health Services. "FAQs: Direct Care Workforce Funding Initiative". (2019) Available at https://www.dhs.wisconsin.gov/medicaid/ltc-workforce-funding-faq.htm

activity programming for a member, provides services such as food service, housekeeping, or transportation to the member."[382] Direct care workers do not include licensed practical nurses, registered nurses, or nurse practitioners.[383]

e. Universality

In order to receive funding for the wage increase, the provider must sign a contract to receive funding from the MCO.[384] It is unclear whether it is optional or mandatory for a provider to contract with an MCO in the first place.

f. Specificity

There is flexibility for the use of funds. Funds may be used to "provide wage increases, bonuses, and/or additional paid time off to direct care workers" or "pay for employer payroll tax increases that result from increasing workers' wages."[385] However, other uses of funding are not allowed outside of these two options.[386]

g. Accountability

There are two levels to be considered for accountability: the MCOs and the providers. MCOs will monitor that the direct care workforce funding amount MCOs pay to each provider matches the amount DHS calculated each provider should receive.[387] After each payment, MCOs will be required to attest they paid the direct care workforce funding to providers.[388] For the providers, they are required to report how they paid the funding to direct care workers and providers will also need to keep documentation identifying the precise amounts paid to each direct care worker on a quarterly basis.[389]

h. Continuity

WPT laws have been passed every other year since 1999. However, there is nothing that specifically states that Wisconsin is required to pass an appropriation in the budget. Nevertheless, funding has been approved for the 2019-2021 budget, which increases funding by $67 million to improve ages for direct care staff.[390]

i. Notice

The providers must submit documentation and report how they paid those funds on a quarterly basis.[391] The only thing the website provides is the dates for when those documents are required. It is unclear how far in advance these dates were created. In addition, it appears

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[382] *Id.*
[383] *Id.*
[384] *Id.*
[385] *Id.*
[386] *Id.*
[387] *Id.*
[388] *Id.*
[389] *Id.*
[390] Wisconsin Department of Health Services. "Governor Evers' 2019-2021 budget" (2019) Available at https://www.dhs.wisconsin.gov/budget/index.htm
[391] Wisconsin Department of Health Services. "FAQs: Direct Care Workforce Funding Initiative". (2019). Available at https://www.dhs.wisconsin.gov/medicaid/ltc-workforce-funding-faq.htm

that there have been extensions provided for 3 of the 4 quarters.[392]

[392] *Id.*

22. WYOMING

a. Date Current Program Started

The program started in 2000.[393] The WPT law was created by biennium appropriations bills.

b. Type of WPT

The WPT law designates a **certain percentage of a reimbursement rate increase** be used for wages/benefits.

c. Size of Increase

The size of the increase in wages is unclear.

The 2000 WPT law required the department of health to use $1,255,882 from the general fund and $2,232,680 from the federal fund to be used to increase wages.[394] The 2009 WPT law appropriated $ 2.8 million for compensation increases according to the existing distribution model, which was not defined in the law.[395] An additional $100,000 must be distributed for wages according to a reasonable and fair distribution formula to equalize wages of employees performing similar functions based on occupational wage information from the Department on Employment.[396] The 2010 WPT law added $400,000 for senior center direct care workers.[397]

d. Equity

The increase applies to residential direct care workers. The 2000 to 2002 budgets provided increases for nursing facility workers,[398] while the 2009 and 2010 budgets directed funds increased wages for senior center workers.[399]

e. Universality

Mandatory.

f. Specificity

The 2000 WPT law required funds to be expended upon direct patient care personnel.[400] The 2009 WPT law issued two guidelines: raise the salaries of direct care personnel and to equalize wages of employees performing similar functions.[401] The guidelines from 2009 were continued in 2010.[402]

g. Accountability

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[393] WY S.B. 2 (2000).
[394] *Id.*
[395] WY H.B. 1 (2009).
[396] *Id.*
[397] WY H.B. 1 (2010).
[398] WY S.B. 2 (2000).
[399] WY H.B. 1 (2009); WY H.B. 1 (2010).
[400] WY S.B. 2 (2000).
[401] WY H.B. 1 (2009).
[402] WY H.B. 1 (2010).

In 2000, nursing care facilities were required to provide data sufficient to demonstrate that all designated funds were spent on direct patient care personnel.[403] The Health Department and the Joint Appropriations Interim Committee established indicators to monitor appropriate spending. The indicators must be periodically submitted to the Department.[404] Subsequent budgets required the establishment of fewer accountability measures: the Department was required to report to the Joint Appropriations Committee on how funds were used and the effect on the wages of direct care personnel by Nov 1, 2002. The 2004, 2008, and 2010 budgets did not specify reporting requirements.[405]

h. Continuity

Each legislative action was made as part of a biennial appropriation without promise of further funding.[406]

i. Notice

Each legislative action was made as part of a biennial appropriation from July 1st through June 30th of even years.[407] The 2009 and 2010 WPT laws required a return of unexpended funds by the last day of the biennial period.[408]

[403] WY S.B. 2 (2000).
[404] *Id.*
[405] WY S.B. 2 (2000); WY H.B. 1 (2009); WY H.B. 1 (2010).
[406] *Id.*
[407] *Id.*
[408] WY H.B. 1 (2009); WY H.B. 1 (2010).