



# The Trust Fund Board:

## An Integral Part of the Maine Universal Home Care Program

A Model for the Future, Rooted in the Past

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# Overview

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The Maine Universal Home Care for Seniors and Persons with Disabilities referendum would create a Universal Home Care Trust Fund Board to oversee the trust fund established by the referendum.<sup>1</sup> The board is to design and deliver the Universal Home Care program. Charged with “maximiz[ing] access to in-home and community support services,” it would “ensure improvements in the wages, benefits and working conditions of persons providing in-home and community support services,” “set reimbursement rates for services,” and take other actions to administer and improve the program and the in-home care sector in general.<sup>2</sup> It would allocate the trust fund resources, raised by a specific and dedicated tax, to meet those ends. The board also has an advisory role, advising the Maine legislature on policies relating to in-home and community support services, and working with the Maine Department of Health and Human Services to provide supplementary funding for other healthcare programs, setting up additional advisory committees as necessary.<sup>3</sup>

The composition of the board must reflect the stakeholders in home care: it must consist of three members who represent personal care agencies, three care providers, and three recipients of in-home and community support services or family members or guardians of people receiving such services.<sup>4</sup> After a transitional period in which elected officials appoint board members, these constituencies will elect representatives to the board.<sup>5</sup>

By having those most directly impacted by the program on the board, the Universal Home Care Trust Fund Board presents an innovative strategy. People working in the care sector, families that receive care, and businesses that employ people working in the care industry become the ones responsible for managing the program. This organization will ensure that the program is managed in an efficient way that accounts for and raises up the interests of the primary stakeholders in the program.

While innovative, the trust fund proposal is part of a long-standing American effort to enhance democratic decision making and citizen control over crucial social services. It has its roots in U.S. history, as several past and current programs have used similar strategies to govern important programs established by state and local governments, including wage boards, which have been used to set minimum wages for various industries, the California In-Home Support Services program, Housing Trust Funds, and various other state and local boards and commissions.

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<sup>1</sup> See An Act To Establish Universal Home Care for Seniors and Persons with Disabilities, § 7284.

<sup>2</sup> *Id.*

<sup>3</sup> See *Id.*

<sup>4</sup> *Id.* § 7284(3).

<sup>5</sup> See *id.* § 7284(4), (5).

# Historical Context

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## 1. Progressive Era Wage Boards

The minimum wage board developed in the early 20<sup>th</sup> century to ameliorate the problem of low wages, especially prominent in industries that hired women and children. In 1912, Massachusetts created the first permanent Minimum Wage Commission to investigate whether working women were being paid a living wage. If the commission determined that women were not being paid a living wage in any given industry, the commission established a wage board consisting of six or more employer representatives, an equal number of female employee representatives, and a smaller number of representatives from the general public.<sup>6</sup> After Massachusetts passed its law, a number of other states created wage boards to set minimum wages for women.<sup>7</sup> In addition to the states, Congress also created a wage board to set minimum wages for working women in the District of Columbia. While these laws covered only women and minors, by the 1970s they included men as well. The focus became the characteristics of the industry and the workforce.

Along with California, New York offers one of the continuing efforts to empower boards representing working people and business to set standards for an industry. For more than 80 years, New York State has empowered wage boards to help set minimum wages for industries in the state. The state's commissioner of labor appoints these boards and their minimum wage recommendations become law if approved by the labor commissioner. Akin to the proposed trust fund board, the wage boards legally must consist of an equal number of representatives of employers, employees, and persons selected from the general public. Furthermore, the New York wage board law requires "the representatives of the employers and employees to be selected so far as practicable from nominations submitted by employers and employees in such occupation or occupations."<sup>8</sup> New York State Labor Commissioner Mario Musolino convened a wage board to investigate the minimum wage level for people working in the fast food industry in 2015, and New York State has used wage boards more than 30 times to set wages since 1933.<sup>9</sup>

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<sup>6</sup> See Florence Kelley, Minimum-Wage Laws, 20 *Journal of Political Economy* 999, 999-1000 (1912).

<sup>7</sup> See Ova Atkas, The intellectual history of the minimum wage and overtime, Washington Center for Equitable Growth (2015) (available at <https://equitablegrowth.org/intellectual-history-minimum-wage-overtime/>).

<sup>8</sup> N.Y. Labor Law – LAB § 655. These wage boards were limited to protecting working women, in part, because the U.S. Supreme Court had struck down maximum hour laws that applied to both men and women, see *Lochner v. New York*, 198 U.S. 45 (1905), but had upheld maximum hour laws that applied only to women, see *Muller v. Oregon*, 208 U.S. 412 (1908).

<sup>9</sup> See Mike Vilensky, New York Wage Boards Shaped Policy for Decades, *Wall Street Journal*, August 6, 2015.

Wage boards elsewhere were not abandoned because they were ineffective or hurt businesses. Rather, the Supreme Court stepped in and declared the wage board statute Congress passed to cover the District of Columbia to be unconstitutional because women were no longer dependent after winning suffrage and like men had a “right to contract” at any wage they could, an interpretation of the 14<sup>th</sup> amendment of the Constitution later repudiated.<sup>10</sup> As a result, states stopped enacting minimum wage laws until the New Deal, when the National Industrial Recovery Act again set up industry-by-industry minimum wage requirements. The boards determining these wages also consisted of representatives of employers, workers, government and the public. However, when the Supreme Court stepped in again and struck down key parts of that law,<sup>11</sup> Congress responded by creating an across-the-board minimum wage standard in the Fair Labor Standards Act, a decision that was mimicked in most states as well, especially after the Supreme Court reversed course and upheld state minimum wage laws in 1937.<sup>12</sup> The police power of the state, to protect the health and welfare of the people, could then extend to men as well as women. Initially, under FLSA, wage boards functioned to determine rates for the lowest waged industries, which would undergo economic hardship if forced to increase their wages too quickly. This kind of flexibility demonstrates the ways that wage boards can account for local and industry specific conditions to benefit all stakeholders.

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## 2. California In-Home Support Services Program

States have experimented with boards similar to the proposed trust board for the care sector. Most notable and pioneering is California. It created the In-Home Support Services (IHSS) program in 1993 to allow counties to establish a registry of home care providers, investigate backgrounds and qualifications of caregivers on the registry, provide training, and act as the employer of record of these care workers for collective bargaining purposes, some of the same responsibilities that the trust board in Maine will have. The statute gave counties the option of either contracting with non-profit consortium or setting up a Public Authority to run their IHSS programs.

If a county chooses the public authority route, the county must either name the county’s Board of Supervisors as the governing body for the Public Authority or name separate governing body to take on that role. If the county goes the separate governing body route, the governing body a majority of the members of that body must be consumers of care provided by IHSS providers. If the Board of Supervisors acts as the governing body, the county must create an advisory board, which must also contain a consumer majority.<sup>13</sup>

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<sup>10</sup> See *Adkins v. Children’s Hospital of D.C.*, 261 U.S. 525 (1923).

<sup>11</sup> See *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).

<sup>12</sup> See *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937).

<sup>13</sup> See California Welfare & Institutions Code § 12301.6(a), (b).

While the requirement that consumers have a strong voice in the Public Authorities is similar to the trust board proposal, unlike the trust board, there is no requirement that either people working as caregivers or care sector private employment agencies be representatives on either the governing body or the advisory board.

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### 3. State and Local Housing Trust Funds

Many states and local governments have set up housing trust funds to address the problem of insufficient affordable housing in their jurisdictions that also have elements resembling the proposed Universal Home Care Trust Fund Board.

As the Center for Community Change (CCC) has detailed, since the 1980s, state and local governments across the country have created housing trust funds to address the issue of affordable housing. According to CCC, many housing trust funds include “housing advocates, low income people or tenants, service providers, bankers, realtors, apartment owners, developers and others.”<sup>14</sup> For instance, the Indiana Housing and Community Development Fund advisory committee consists of 16 members appointed by the governor who represent:

the division of mental health and addiction; the division of family resources; the division of disability, aging, and rehabilitative services; the office of the lieutenant governor; residential real estate developers; construction trades; banks and other lending institutions; the interests of persons with disabilities; service providers; low income families; nonprofit community based organizations and community development corporations; real estate brokers or salespersons; the Indiana Apartment Owner’s Association; the manufactured housing industry; and two members to represent neighborhood groups.<sup>15</sup>

These boards often have some level of responsibility for establishing or advising on policy governing the fund and help choose among the applicants for funding. They also usually have reporting requirements that describes the activities of the housing trust, the amount of funding the trust has, how much it spent, the projects it spent it on, and the trust’s accomplishments.

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<sup>14</sup> CCC, Housing Trust Oversight and Reporting, *available at* <https://housingtrustfundproject.org/htf-elements/oversight-and-reporting/> (last visited August 25, 2018).

<sup>15</sup> *Id.*

## 4. Other State and Local Commissions

There are a number of other state and local commissions whose makeup and function mirror aspects of the proposed trust fund board. Public Health Commissions, for instance, are often appointed by mayors or a legislative body to oversee and regulate public hospitals, regulate emergency medical services, and otherwise promote the health of the residents of the city, town or county they represent. The San Francisco Health Commission, which has regulatory power over the city's hospitals and EMS system, is made up of both direct healthcare providers and of citizens appointed by the mayor.<sup>16</sup> The Alexandria, Virginia Public Health Advisory Committee is an advisory committee that oversees the budget of the city's health department including its management of the city's hospital, promotes health and safety, and addresses issues of city residents' access to healthcare. The commission is made up of a broad cross-section of the community, including direct healthcare providers, city residents who are not healthcare providers, a representative from the city's hospital, representatives of community groups, and others.<sup>17</sup>

Local planning commissions also are often made up of a cross-section of stakeholders and have either regulatory authority over zoning, economic development and other municipal planning issues. According to the Planning Commissioners Journal, six percent of all planning commissioners were elected to their post—with the elected planning commissions existing mainly in Massachusetts and Connecticut, which have statutes expressly allowing local governments to establish elected planning boards.<sup>18</sup> An example of the cross-section of the community that are required to be members of planning commissions can be found in Michigan's enabling act for municipal and county planning commissions. Michigan's statute states that "the membership of the planning commission shall be representative of important segments of the community such as the economic, governmental, educational, and social development of the local unit of government."<sup>19</sup> The statute adds: "The membership shall also be representative of the entire territory of the local unit of government to the extent practicable."<sup>20</sup>

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<sup>16</sup> See San Francisco Health Commission Rules and Regulations (amended 2018, § II.A available at <https://www.sfdph.org/dph/hc/RulesofOrderrevised06052018.pdf> (last visited August 23, 2018).

<sup>17</sup> See Alexandria City Code, Art. 5 § 2-4-170(b).

<sup>18</sup> See Length of Service; Who Selects Commissioners; Recruiting New Members, *Planning Commissioners Journal*, October 1, 2014, available at <http://plannersweb.com/2014/10/length-of-service/> (last visited August 20, 2018).

<sup>19</sup> Michigan Compiled Laws § 125.3815(3).

<sup>20</sup> *Id.*

# Policy Considerations

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The Universal Home Care Trust Fund Board has several advantages beyond the fact that the stakeholders in the universal home care program will oversee the program and ensure the program is efficiently run for the benefit of people who need home care and caregivers. As with each of other examples discussed above, the trust fund board must provide an annual report to the Maine legislature. The report must include information on “revenues, expenditures on in-home and community support services, administrative costs, provider reimbursement rates and any other information relating to the fund.”<sup>21</sup> This will ensure that there is public oversight over the board and that its actions and expenditures are transparent to the legislature and to the people.

In addition, and again similarly to the other boards and commissions discussed above, the board will use experts in the homecare field to guide its deliberations and policymaking. Board members are uncompensated and will have other responsibilities as caregivers, representatives of industry, and recipients of care and their families. The board will therefore hire an executive director who will therefore provide day-to-day oversight of the program and will “take all actions appropriate and necessary to administer the program, provide administrative, managerial and technical support for the operations of the board.”<sup>22</sup> The proposal mandates that the executive director “must have expertise relevant to managing the program” and “may hire additional professional and administrative staff as necessary to administer the program.”<sup>23</sup> This will have the advantage of ensuring that the Maine Universal Home Care program is guided by experts while being overseen by the people most affected by the program.

The Universal Home Care Trust Fund Board is an integral part of the Maine Universal Home Care for Seniors and Persons with Disabilities referendum. It is grounded in U.S. history, resembles many of the boards and commissions that state, county, and local governments have created to improve the lives of their residents, and will ensure that the program is expertly run for the benefit of the stakeholders and all Maine residents.

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<sup>21</sup> An Act To Establish Universal Home Care for Seniors and Persons with Disabilities, § 7284(2)(P).

<sup>22</sup> *Id.* § 7284(7).

<sup>23</sup> *Id.*