

BY: Finance Committee

AMENDMENTS TO HOUSE BILL 1238
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 10, after “stakeholders;” insert “requiring the Administration to complete the study on or before a certain date;”; in line 11, after “regulations;” insert “requiring that, beginning in a certain fiscal year, a certain survey be submitted in a certain format, meet a certain objective, and include certain information and a certain attestation; requiring a community provider to make certain information available to the Department of Health and Mental Hygiene under certain circumstances; prohibiting a certain percentage of certain expenses of a community provider spent on certain salaries, wages, and fringe benefits for a fiscal year from being less than a certain percentage of certain expenses of a community provider spent on certain salaries, wages, and fringe benefits for a certain fiscal year; requiring the Department of Health and Mental Hygiene to provide to a community provider certain written notice of certain determinations under certain circumstances; requiring a community provider to have a certain number of days after receiving notice of a certain determination to take certain action; requiring the Department of Health and Mental Hygiene to recoup certain funds through a certain process from a community provider under certain circumstances; authorizing the Department of Health and Mental Hygiene to contract with an independent consultant to implement certain provisions of this Act;”; in line 12, strike “a”; in the same line, strike “report” and substitute “reports”; and in line 16, after “frame;” insert “making certain provisions of this Act contingent on the passage of another Act; providing for the termination of certain provisions of this Act under certain circumstances;”.

On page 2, in line 5, after “7-306.2” insert “and 7-306.3”.

AMENDMENT NO. 2

On page 6, after line 23, insert:

(Over)

“(B) THE ADMINISTRATION, ON OR BEFORE SEPTEMBER 30, 2017, SHALL COMPLETE THE STUDY REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.”;

in line 24, strike “(B)” and substitute “(C)”; after line 25, insert:

“SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Health – General

7-306.3.

(A) (1) BEGINNING IN FISCAL 2014, THE WAGE SURVEY REQUIRED UNDER § 7-306.1 OF THIS SUBTITLE SHALL BE SUBMITTED BY A COMMUNITY PROVIDER IN A FORMAT THAT:

(I) MEETS THE REQUIREMENTS OF THIS SUBSECTION; AND

(II) IS APPROVED BY THE DEPARTMENT.

(2) THE WAGE SURVEY SHALL:

(I) ALLOW THE DEPARTMENT TO ACCURATELY ASSESS THE LEVEL OF WAGES AND BENEFITS PAID BY A COMMUNITY PROVIDER TO DIRECT SUPPORT EMPLOYEES WHO PROVIDE SERVICES FUNDED BY THE ADMINISTRATION;

(II) AT A MINIMUM, INCLUDE:

1. THE STARTING WAGE AND THE AVERAGE WAGE PAID BY THE COMMUNITY PROVIDER TO DIRECT SUPPORT EMPLOYEES;

2. THE EXPENDITURES MADE ANNUALLY BY THE COMMUNITY PROVIDER FOR DIRECT SUPPORT EMPLOYEE WAGES;

3. THE COSTS AND EXPENDITURES FOR MANDATORY AND VOLUNTARY FRINGE BENEFITS; AND

4. THE AVERAGE TENURE AND TURNOVER OF DIRECT SUPPORT EMPLOYEES; AND

(III) INCLUDE AN ATTESTATION BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT THAT THE DATA IN THE WAGE SURVEY IS ACCURATE.

(3) AT THE REQUEST OF THE DEPARTMENT, A COMMUNITY PROVIDER SHALL MAKE AVAILABLE TO THE DEPARTMENT INDIVIDUALIZED PAYROLL INFORMATION FOR EACH DIRECT SUPPORT EMPLOYEE OF THE COMMUNITY PROVIDER.

(B) (1) THIS SUBSECTION APPLIES IN FISCAL 2015 AND EACH FISCAL YEAR THEREAFTER BEFORE THE EARLIER OF:

(I) THE IMPLEMENTATION OF THE PAYMENT SYSTEM REQUIRED UNDER § 7-306.2 OF THIS SUBTITLE; OR

(II) THE END OF FISCAL YEAR 2019.

(2) THE PERCENTAGE OF A COMMUNITY PROVIDER'S TOTAL REPORTED OPERATING EXPENSES, EXCLUDING INTEREST ON CAPITAL AND OTHER CAPITAL EXPENSES, THAT IS SPENT ON DIRECT SUPPORT EMPLOYEE SALARIES, WAGES, AND FRINGE BENEFITS FOR A FISCAL YEAR, AS REPORTED TO THE DEPARTMENT BY THE PROVIDER IN ITS FISCAL YEAR COST REPORT DATA FORM, MAY NOT BE LESS THAN THE PERCENTAGE OF THE COMMUNITY PROVIDER'S TOTAL REPORTED OPERATING EXPENSES SPENT ON DIRECT SUPPORT EMPLOYEE SALARIES, WAGES, AND FRINGE BENEFITS FOR FISCAL YEAR 2014.

(3) IF THE DEPARTMENT DETERMINES THAT THE PROPORTION OF A COMMUNITY PROVIDER'S EXPENSES FOR DIRECT SUPPORT EMPLOYEE SALARIES, WAGES, AND FRINGE BENEFITS FOR A FISCAL YEAR FALLS BELOW THE LEVEL REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE DEPARTMENT SHALL NOTIFY THE COMMUNITY PROVIDER OF THE DETERMINATION IN WRITING.

(4) A COMMUNITY PROVIDER SHALL HAVE 45 DAYS AFTER RECEIVING NOTICE OF THE DETERMINATION UNDER PARAGRAPH (3) OF THIS SUBSECTION TO:

(I) CONTEST THE DETERMINATION;

(II) PROVIDE INFORMATION TO THE DEPARTMENT DEMONSTRATING MITIGATING CIRCUMSTANCES JUSTIFYING THE COMMUNITY PROVIDER'S NONCOMPLIANCE WITH PARAGRAPH (2) OF THIS SUBSECTION, WHICH MAY INCLUDE PROOF THAT THE AVERAGE WAGE PAID TO DIRECT SUPPORT EMPLOYEES BY THE COMMUNITY PROVIDER INCREASED IN

PROPORTION TO THE RATE INCREASE TO THE COMMUNITY PROVIDER FOR THE FISCAL YEAR; OR

(iii) SUBMIT A PLAN OF CORRECTION TO THE DEPARTMENT.

(5) THE DEPARTMENT SHALL NOTIFY A COMMUNITY PROVIDER IN WRITING OF ITS FINAL DETERMINATION AFTER AFFORDING THE COMMUNITY PROVIDER THE OPPORTUNITY TO CONTEST THE DETERMINATION, DEMONSTRATE MITIGATING CIRCUMSTANCES, OR SUBMIT A PLAN OF CORRECTION UNDER PARAGRAPH (4) OF THIS SUBSECTION.

(6) (i) THE DEPARTMENT SHALL RECOUP FUNDS FROM A COMMUNITY PROVIDER THAT HAVE NOT BEEN EXPENDED AS REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION THROUGH A RECONCILIATION PROCESS IF:

1. A COMMUNITY PROVIDER FAILS TO RESPOND TO A DETERMINATION OF THE DEPARTMENT WITHIN THE TIME PROVIDED UNDER PARAGRAPH (4) OF THIS SUBSECTION;

2. THE DEPARTMENT DOES NOT FIND MITIGATING CIRCUMSTANCES; OR

3. THE DEPARTMENT DOES NOT ACCEPT A PLAN OF CORRECTION SUBMITTED BY THE COMMUNITY PROVIDER.

(ii) THE AMOUNT OF FUNDS RECOUPED BY THE DEPARTMENT UNDER THIS PARAGRAPH SHALL BE THE DIFFERENCE BETWEEN THE ACTUAL FUNDS SPENT BY THE COMMUNITY PROVIDER ON DIRECT SUPPORT

(Over)

EMPLOYEE SALARIES, WAGES, AND FRINGE BENEFITS DURING THE FISCAL YEAR AT ISSUE AND THE AMOUNT OF FUNDS THAT THE COMMUNITY PROVIDER WAS REQUIRED TO SPEND ON DIRECT SUPPORT EMPLOYEE SALARIES, WAGES, AND FRINGE BENEFITS UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(7) THE DEPARTMENT MAY CONTRACT WITH AN INDEPENDENT CONSULTANT TO IMPLEMENT THIS SUBSECTION.

(C) (1) ON OR BEFORE DECEMBER 1, 2015, THE DEPARTMENT SHALL SUBMIT, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE SENATE FINANCE COMMITTEE, THE SENATE BUDGET AND TAXATION COMMITTEE, THE HOUSE APPROPRIATIONS COMMITTEE, AND THE HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE A REPORT SUMMARIZING THE RANGE OF TOTAL FUNDING SPENT BY COMMUNITY PROVIDERS ON DIRECT SUPPORT EMPLOYEE SALARIES, WAGES, AND FRINGE BENEFITS AS A PERCENTAGE OF TOTAL REPORTED OPERATING EXPENSES, EXCLUDING INTEREST ON CAPITAL AND OTHER EXPENSES, FOR FISCAL YEAR 2014.

(2) THE REPORT REQUIRED UNDER THIS SUBSECTION SHALL INCLUDE AN ANALYSIS OF DATA TO EXPLAIN ANY SIGNIFICANT OUTLIERS IN SPENDING PATTERNS AMONG COMMUNITY PROVIDERS.”;

and in line 26, strike “3.” and substitute “4.”.

On page 7, in lines 4 and 11, strike “4.” and “5.”, respectively, and substitute “5.” and “8.”, respectively; after line 10, insert:

“SECTION 6. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take effect October 1, 2014, contingent on the taking effect of Chapter _____ (H.B.

295) of the Acts of the General Assembly of 2014, and if Chapter (H.B. 295) does not become effective, Section 3 of this Act shall be null and void without the necessity of further action by the General Assembly.

SECTION 7. AND BE IT FURTHER ENACTED, That, if Section 3 of this Act becomes effective, Section 3 of this Act shall be abrogated and of no further force and effect on the effective date of the regulations adopted by the Developmental Disabilities Administration as required by § 7-306.2 of the Health - General Article, as enacted by Section 2 of this Act. The Secretary of Health and Mental Hygiene, within 5 days after the effective date of the regulations, shall provide written notice of the effective date of the regulations to the Department of Legislative Services, 90 State Circle, Annapolis, Maryland 21401.”;

in line 12, strike “4” and substitute “5”; and in the same line, after “Act,” insert “and subject to Section 6 of this Act.”.