

Chapter 648

(House Bill 1238)

AN ACT concerning

Developmental Disabilities Administration – Payment of Providers

FOR the purpose of repealing, effective as of a certain date, certain provisions of law requiring the Developmental Disabilities Administration to develop and implement a certain funding system for the distribution of State funds to certain providers to provide certain community-based services; requiring the Administration to conduct a certain study, develop and implement a certain plan, develop a certain strategy, provide for certain payments, develop a certain billing and payment system, establish a certain payment schedule, and consult with certain stakeholders; requiring the Administration to complete the study on or before a certain date; requiring the Administration to adopt certain regulations; 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; requiring the Department of Health and Mental Hygiene to submit ~~a~~ certain ~~report~~ reports to certain committees of the General Assembly; prohibiting the Department of Health and Mental Hygiene from proposing certain regulations until after a certain comment period; requiring the Secretary of Health and Mental Hygiene to provide certain notice to the Department of Legislative Services within a certain time frame; 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; and generally relating to the Developmental Disabilities Administration and a funding system for providers of community-based services.

BY repealing

Article – Health – General
 Section 7–306.1
 Annotated Code of Maryland
 (2009 Replacement Volume and 2013 Supplement)

BY adding to

Article – Health – General
 Section 7–306.2 *and* 7–306.3
 Annotated Code of Maryland
 (2009 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

[7–306.1.

(a) The Administration shall develop and implement a funding system for the distribution of State funds to private providers that are under contract with the Administration to provide community–based services to individuals with disability in accordance with the State plan.

(b) Funds received for services that are fee–for–service or that have rates set by regulation shall be subject to recovery by the Administration only for the following purposes:

- (1) Client attendance;
- (2) Client fees; or
- (3) Sanctions allowed through regulations.

(c) (1) Under the funding system developed under subsection (a) of this section, the Administration shall notify each private provider at least 30 days before the beginning of the fiscal year of the billing rate or amount of funds to be paid to the provider for the provision of community–based services to an individual with developmental disability or a group of individuals with developmental disability for the coming fiscal year.

(2) For rates that are set in regulation, the Administration shall include the cost centers used to determine the funding amount of each rate.

(3) (i) A private provider may request an administrative resolution of a billing rate set under paragraph (1) of this subsection except for rates set in regulation.

(ii) Within 60 days after receipt of the provider's request, the Administration shall make a decision on the request for an administrative resolution.

(iii) If an administrative resolution cannot be reached between the provider and the Administration, the provider may request an evidentiary hearing or an oral hearing in accordance with regulations of the Department.

(d) Subject to the provisions of subsections (e), (f), and (g) of this section, the Administration shall provide payment to private providers for the services provided from the funds designated in subsection (c) of this section in accordance with the following payment schedule:

(1) On or before the third business day of the fiscal quarter beginning July 1, 33% of the total annual amount to be paid to the provider;

(2) On or before the third business day of the fiscal quarter beginning October 1, 25% of the total annual amount to be paid to the provider;

(3) On or before the third business day of the fiscal quarter beginning January 1, 25% of the total annual amount to be paid to the provider; and

(4) On or before the third business day of the fiscal quarter beginning April 1, 17% of the total annual amount to be paid to the provider.

(e) The Administration may deviate from the payment schedule provided under subsection (d) of this section for any provider:

(1) That is reimbursed through the fee payment system and fails to submit properly completed program attendance reports within 15 days of the beginning of each month;

(2) That provides services under the medical assistance program and fails to submit the designated forms used by the medical assistance program to claim federal fund participation within 30 days after the end of each month; or

(3) That fails to submit a cost report for rate-based payment systems or wage surveys as required under subsection (k) of this section.

(f) A deviation from the payment schedule as provided under subsection (e) of this section may occur only if the Administration has:

(1) Advised the provider that:

(i) An attendance report which has been submitted on time is in need of correction;

(ii) A designated medical assistance form which has been submitted on time is in need of correction;

(iii) A cost report for rate-based payment systems has not been submitted within 6 months from the close of the fiscal year or, if submitted, is in need of correction; or

(iv) A wage survey requested under subsection (l) of this section has not been submitted by the later of 60 days from the date of receipt of the request or within 60 days after the last day of the pay period for which the data was requested or, if submitted, is in need of correction.

(2) Allowed the provider at least 5 working days to submit, resubmit or correct the report or form; and

(3) Not in any way contributed to the delay of or error on a report or form.

(g) The amount of a reduction of payments to a provider pursuant to subsections (e) and (f) of this section may not:

(1) Exceed the amount of lost federal revenue attributable to the delay or error; or

(2) In the case of cost reports for rate-based payment systems or wage surveys, exceed \$500 per day per report for each day the report is not submitted past the given due date or corrected.

(h) The Administration:

(1) Shall place sufficient funds in a specially designated account with the Office of the Comptroller to meet its financial obligations under subsection (d) of this section;

(2) Shall disburse funds from the account in accordance with the payment schedule provided in subsection (d) of this section;

(3) May not use the funds in the account for any other purpose except for the purpose of reimbursing private providers for the provision of community-based services to individuals with developmental disability;

(4) Within 1 year after receipt of a private provider's year-end report and cost report for rate-based payment systems, shall reconcile the report and shall provide the provider with a written approval of the report or a written explanation of any items in dispute; and

(5) Shall conduct an audit of each private provider every 4 years.

(i) The Administration shall accept as final the private provider's year-end report and cost report for rate-based payment systems if:

(1) The Administration fails to provide written approval or a written explanation of any items in dispute within 1 year after receiving the report; or

(2) The Administration fails to reconcile the year-end report and cost report for rate-based payment systems within 1 year after receiving the report.

(j) If the Administration fails to conduct an audit of a private provider as required in subsection (h)(5) of this section, the Administration may not audit the private provider for any fiscal year that began more than 48 months before the Administration's notification of audit, unless the Administration suspects fraud or misappropriation of funds.

(k) Private providers shall provide the year-end report to the Administration no later than 6 months after the end of the State fiscal year.

(l) Private providers shall submit to the Administration:

(1) Cost reports for rate-based payment systems no later than 6 months after the end of the State fiscal year; and

(2) Wage surveys by the later of:

(i) 60 days after the last day of the pay period for which the data is requested; or

(ii) 60 days after receipt of a request from the Administration for wage survey information.]

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Health – General

7-306.2.

(A) THE ADMINISTRATION SHALL:

(1) CONDUCT AN INDEPENDENT COST-DRIVEN, RATE-SETTING STUDY TO SET PROVIDER RATES FOR COMMUNITY-BASED SERVICES THAT

INCLUDES A RATE ANALYSIS AND AN IMPACT STUDY THAT CONSIDERS THE ACTUAL COST OF PROVIDING COMMUNITY-BASED SERVICES, INCLUDING:

(I) THE COST OF TRANSPORTATION ACROSS ALL SERVICE TYPES;

(II) APPROPRIATE WAGE AND BENEFIT LEVELS FOR DIRECT SUPPORT AND SUPERVISORY STAFF; AND

(III) RATES THAT INCORPORATE THE FISCAL IMPACT OF ABSENCE DAYS;

(2) DEVELOP AND IMPLEMENT A PLAN INCORPORATING THE FINDINGS OF THE RATE-SETTING STUDY CONDUCTED UNDER ITEM (1) OF THIS SUBSECTION, INCLUDING PROJECTED COSTS OF IMPLEMENTATION AND RECOMMENDATIONS TO ADDRESS ANY POTENTIAL SHORTFALL IN FUNDING;

(3) DEVELOP A STRATEGY FOR ASSESSING THE NEEDS OF AN INDIVIDUAL RECEIVING SERVICES THAT CONFORMS WITH THE FINDINGS OF THE RATE-SETTING STUDY CONDUCTED UNDER ITEM (1) OF THIS SUBSECTION;

(4) PROVIDE FOR ADEQUATE WORKING CAPITAL PAYMENTS TO PROVIDERS;

(5) DEVELOP A SOUND FISCAL BILLING AND PAYMENT SYSTEM THAT IS TESTED FOR ADEQUACY AND EFFICIENCY IN PAYMENT OF PROVIDERS; AND

(6) ESTABLISH A PAYMENT SCHEDULE THAT ENSURES THE TIMELY AND EFFICIENT REIMBURSEMENT OF PROVIDERS FOR SERVICES PROVIDED; AND

~~(6)~~ (7) CONSULT WITH STAKEHOLDERS, INCLUDING PROVIDERS AND INDIVIDUALS RECEIVING SERVICES, IN CONDUCTING THE RATE-SETTING STUDY AND DEVELOPING THE PAYMENT SYSTEM REQUIRED BY THIS SUBSECTION.

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

~~(B)~~ (C) THE ADMINISTRATION SHALL ADOPT REGULATIONS TO IMPLEMENT THE PAYMENT SYSTEM REQUIRED BY THIS SECTION.

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 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.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That:

(a) Before proposing regulations implementing a payment system as required by § 7-306.2 of the Health – General Article, as enacted by Section 2 of this Act, the Department of Health and Mental Hygiene shall submit a report, in accordance with § 2-1246 of the State Government Article, to the Senate Budget and Taxation Committee, the Senate Finance Committee, the House Appropriations Committee, and the House Health and Government Operations Committee summarizing the new payment system.

(b) The committees listed in subsection (a) of this section shall have 60 days to review and comment on the report provided by the Department of Health and Mental Hygiene under subsection (a) of this section.

SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take 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.

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.

SECTION ~~5~~ 8. AND BE IT FURTHER ENACTED, That, except as provided in Section ~~4~~ 5 of this Act, *and subject to Section 6 of this Act*, this Act shall take effect October 1, 2014.

Approved by the Governor, May 15, 2014.