

# HOUSE BILL 1238

J1

(4lr1765)

## ENROLLED BILL

— *Health and Government Operations and Appropriations/Finance and Budget and Taxation* —

Introduced by Delegates Costa ~~and Hammen~~, Hammen, Pendergrass, Bromwell, Cullison, Donoghue, Elliott, Hubbard, A. Kelly, Kipke, Krebs, McDonough, Morhaim, Murphy, Nathan-Pulliam, Oaks, Ready, Reznik, Tarrant, and V. Turner

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

### CHAPTER \_\_\_\_\_

1 AN ACT concerning

#### 2 **Developmental Disabilities Administration – Payment of Providers**

3 FOR the purpose of repealing, effective as of a certain date, certain provisions of law  
4 requiring the Developmental Disabilities Administration to develop and  
5 implement a certain funding system for the distribution of State funds to  
6 certain providers to provide certain community-based services; requiring the  
7 Administration to conduct a certain study, develop and implement a certain  
8 plan, develop a certain strategy, provide for certain payments, develop a certain  
9 billing and payment system, establish a certain payment schedule, and consult  
10 with certain stakeholders; requiring the Administration to complete the study on  
11 or before a certain date; requiring the Administration to adopt certain

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#### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics indicate opposite chamber/conference committee amendments.*



1 regulations; requiring that, beginning in a certain fiscal year, a certain survey be  
 2 submitted in a certain format, meet a certain objective, and include certain  
 3 information and a certain attestation; requiring a community provider to make  
 4 certain information available to the Department of Health and Mental Hygiene  
 5 under certain circumstances; prohibiting a certain percentage of certain expenses  
 6 of a community provider spent on certain salaries, wages, and fringe benefits for  
 7 a fiscal year from being less than a certain percentage of certain expenses of a  
 8 community provider spent on certain salaries, wages, and fringe benefits for a  
 9 certain fiscal year; requiring the Department of Health and Mental Hygiene to  
 10 provide to a community provider certain written notice of certain determinations  
 11 under certain circumstances; requiring a community provider to have a certain  
 12 number of days after receiving notice of a certain determination to take certain  
 13 action; requiring the Department of Health and Mental Hygiene to recoup certain  
 14 funds through a certain process from a community provider under certain  
 15 circumstances; authorizing the Department of Health and Mental Hygiene to  
 16 contract with an independent consultant to implement certain provisions of this  
 17 Act; requiring the Department of Health and Mental Hygiene to submit a  
 18 certain ~~report~~ reports to certain committees of the General Assembly;  
 19 prohibiting the Department of Health and Mental Hygiene from proposing  
 20 certain regulations until after a certain comment period; requiring the  
 21 Secretary of Health and Mental Hygiene to provide certain notice to the  
 22 Department of Legislative Services within a certain time frame; making certain  
 23 provisions of this Act contingent on the passage of another Act; providing for the  
 24 termination of certain provisions of this Act under certain circumstances; and  
 25 generally relating to the Developmental Disabilities Administration and a  
 26 funding system for providers of community-based services.

27 BY repealing

28 Article – Health – General  
 29 Section 7–306.1  
 30 Annotated Code of Maryland  
 31 (2009 Replacement Volume and 2013 Supplement)

32 BY adding to

33 Article – Health – General  
 34 Section 7–306.2 *and* 7–306.3  
 35 Annotated Code of Maryland  
 36 (2009 Replacement Volume and 2013 Supplement)

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

39 **Article – Health – General**

40 [7–306.1.

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

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

8 (1) Client attendance;

9 (2) Client fees; or

10 (3) Sanctions allowed through regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17           (1) Advised the provider that:

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

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

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

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

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

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

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

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

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

8 (h) The Administration:

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

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

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

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

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

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

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

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

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

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

1 (l) Private providers shall submit to the Administration:

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

4 (2) Wage surveys by the later of:

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

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

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

11 **Article – Health – General**

12 **7-306.2.**

13 **(A) THE ADMINISTRATION SHALL:**

14 **(1) CONDUCT AN INDEPENDENT COST-DRIVEN, RATE-SETTING**  
15 **STUDY TO SET PROVIDER RATES FOR COMMUNITY-BASED SERVICES THAT**  
16 **INCLUDES A RATE ANALYSIS AND AN IMPACT STUDY THAT CONSIDERS THE**  
17 **ACTUAL COST OF PROVIDING COMMUNITY-BASED SERVICES, INCLUDING:**

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

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

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

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

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

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

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

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

9           ~~(6)~~ (7)    CONSULT WITH STAKEHOLDERS, INCLUDING  
10 PROVIDERS AND INDIVIDUALS RECEIVING SERVICES, IN CONDUCTING THE  
11 RATE-SETTING STUDY AND DEVELOPING THE PAYMENT SYSTEM REQUIRED BY  
12 THIS SUBSECTION.

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

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

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

19    Article – Health – General

20           7-306.3.

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

24    **(I) MEETS THE REQUIREMENTS OF THIS SUBSECTION; AND**

25    **(II) IS APPROVED BY THE DEPARTMENT.**

26           **(2) THE WAGE SURVEY SHALL:**

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

1                    **(II) AT A MINIMUM, INCLUDE:**

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

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

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

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

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

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

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

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

21                   **(II) THE END OF FISCAL YEAR 2019.**

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

31                   **(3) IF THE DEPARTMENT DETERMINES THAT THE PROPORTION OF**  
32 **A COMMUNITY PROVIDER'S EXPENSES FOR DIRECT SUPPORT EMPLOYEE**



1 SALARIES, WAGES, AND FRINGE BENEFITS FOR A FISCAL YEAR FALLS BELOW THE  
2 LEVEL REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE  
3 DEPARTMENT SHALL NOTIFY THE COMMUNITY PROVIDER OF THE  
4 DETERMINATION IN WRITING.

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

8 (I) CONTEST THE DETERMINATION;

9 (II) PROVIDE INFORMATION TO THE DEPARTMENT  
10 DEMONSTRATING MITIGATING CIRCUMSTANCES JUSTIFYING THE COMMUNITY  
11 PROVIDER'S NONCOMPLIANCE WITH PARAGRAPH (2) OF THIS SUBSECTION,  
12 WHICH MAY INCLUDE PROOF THAT THE AVERAGE WAGE PAID TO DIRECT  
13 SUPPORT EMPLOYEES BY THE COMMUNITY PROVIDER INCREASED IN  
14 PROPORTION TO THE RATE INCREASE TO THE COMMUNITY PROVIDER FOR THE  
15 FISCAL YEAR; OR

16 (III) SUBMIT A PLAN OF CORRECTION TO THE DEPARTMENT.

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

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

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

29 2. THE DEPARTMENT DOES NOT FIND MITIGATING  
30 CIRCUMSTANCES; OR

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

33 (II) THE AMOUNT OF FUNDS RECOUPED BY THE  
34 DEPARTMENT UNDER THIS PARAGRAPH SHALL BE THE DIFFERENCE BETWEEN

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

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

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

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

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

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

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

31 SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That Section 1 of this Act  
32 shall take effect on the effective date of the regulations adopted by the Developmental  
33 Disabilities Administration as required by § 7-306.2 of the Health – General Article,  
34 as enacted by Section 2 of this Act. The Secretary of Health and Mental Hygiene,  
35 within 5 days after the effective date of the regulations, shall provide written notice of  
36 the effective date of the regulations to the Department of Legislative Services, 90 State  
37 Circle, Annapolis, Maryland 21401.

1        SECTION 6. AND BE IT FURTHER ENACTED, That Section 3 of this Act  
 2 shall take effect October 1, 2014, contingent on the taking effect of Chapter \_\_\_\_\_ (H.B.  
 3 295) of the Acts of the General Assembly of 2014, and if Chapter \_\_\_\_\_ (H.B. 295) does not  
 4 become effective, Section 3 of this Act shall be null and void without the necessity of  
 5 further action by the General Assembly.

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

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

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.