

Chapter 522

(House Bill 420)

AN ACT concerning

~~Labor and Employment – Minimum Wage – Individuals With Disabilities~~
~~(Ken Capone Equal Employment Act)~~
Individuals With Disabilities – Minimum Wage and Community Integration
(Ken Capone Equal Employment Act)

FOR the purpose of prohibiting the Commissioner of Labor and Industry, ~~except~~ under certain circumstances, from authorizing certain work activities centers and certain sheltered workshops to pay employees with disabilities less than a certain minimum wage; ~~requiring that a certain State certificate issued by the Commissioner under a certain provision of law expires no later than a certain date~~ authorizing certain work activities centers and certain sheltered workshops to pay new employees a certain wage only under certain circumstances; requiring the ~~Department of Labor, Licensing, and Regulation~~ Developmental Disabilities Administration and the Department of Disabilities, in partnership with certain State agencies, to develop and implement a certain plan to phase out certain authorizations under a certain provision of law; providing for the scope of the plan; requiring the Administration and the Department to engage with certain organizations representing those impacted by the phase-out to implement a certain plan; requiring the Administration and the Department to submit a certain plan to the Governor and the General Assembly on or before a certain date; requiring the Department to report certain benchmarks, outcomes, and recommendations to the Governor and the General Assembly on or before a certain date each year dates; prohibiting a certain work activities center or other sheltered workshop from receiving State funds on or after a certain date under certain circumstances; requiring a certain individual and a certain resource coordinator, in consultation with certain individuals, to develop a certain supplemental plan; requiring a certain resource coordinator to use appropriate communication devices and techniques to facilitate the involvement of a certain individual in the development of the individual's supplemental plan; requiring that an individual's plan include certain information; requiring the Administration, in consultation with certain stakeholders, to develop the planning protocol and format for a supplemental plan; requiring a certain individual and the individual's resource coordinator and team to discuss a certain job setting on an annual basis and at any other time requested by the individual; requiring the resource coordinator to document certain information in a certain individual's annual individual plan; requiring the Administration to track the progress of certain individuals by collecting certain data; requiring the Administration to report certain information to the Governor and the General Assembly on or before certain dates; prohibiting the Administration from funding certain providers beginning on a certain date; requiring a certain new employee to be informed by the employee's employer of certain opportunities, have a plan of habilitation that includes certain information, be engaged in certain work when choosing to work, choose the employer

and employment, and be informed of certain rights; repealing certain provisions of law relating to the authorization of certain work activities centers and certain sheltered workshops to pay certain employees with disabilities less than a certain minimum wage; repealing certain provisions of law requiring the Administration and the Department to develop and implement a certain plan and make certain reports; repealing certain provisions of law requiring certain individuals to have a certain supplemental plan; repealing certain provisions of law requiring that a certain new employee be informed by the employee's employer of certain opportunities, have a plan of habilitation that includes certain information, be engaged in certain work when choosing to work, choose the employer and employment, and be informed of certain rights; authorizing certain work activities centers and other workshops, beginning on a certain date, to pay less than the federal prevailing wage of pay to the extent authorized under federal law and under certain circumstances; requiring the Administration and the Department to conduct a certain study, determine certain information, and make certain recommendations; requiring the Administration and the Department to consult certain State agencies, other entities, and relevant stakeholders in carrying out certain duties; requiring the Administration and the Department to report their findings and recommendations to the Governor and certain committees of the General Assembly on or before a certain date; altering certain terminology; providing for a delayed effective date for certain provisions of this Act; and generally relating to the payment of wages under the Maryland Wage and Hour Law and to and community integration of individuals with disabilities.

BY adding to

Article – Health – General
Section 7–207, 7–1012, 7–1013, and 7–1014
Annotated Code of Maryland
(2015 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Labor and Employment
 Section 3–414
 Annotated Code of Maryland
 (2008 Replacement Volume and 2015 Supplement)

~~BY adding to~~

~~Article – Labor and Employment~~
~~Section 3–414.1~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2015 Supplement)~~

~~BY adding to~~

~~Article – State Finance and Procurement~~
~~Section 2–801 to be under the new subtitle “Subtitle 8. Miscellaneous”~~
~~Annotated Code of Maryland~~

~~(2015 Replacement Volume)~~

BY repealing

Article – Health – General
Section 7–1012, 7–1013, and 7–1014
Annotated Code of Maryland
(2015 Replacement Volume)
(As enacted by Section 1 of this Act)

BY repealing and reenacting, with amendments,

Article – Labor and Employment
Section 3–414 and ~~3–414.1~~
Annotated Code of Maryland
(2008 Replacement Volume and 2015 Supplement)
(As enacted by Section 1 of this Act)

Preamble

WHEREAS, Section 14(c) of the Fair Labor Standards Act of 1938 authorizes the United States Secretary of Labor to grant special wage certificates to certain entities, which may then pay special minimum wages less than the federal minimum wage to workers who have disabilities; and

WHEREAS, These Section 14(c) certificates also allow the payment of wages that are less than the prevailing wage to workers who have disabilities for work being performed on contracts subject to the McNamara–O’Hara Service Contract Act and the Walsh–Healey Public Contracts Act; and

WHEREAS, During 2015, 3,589 Maryland residents were employed under Section 14(c) certificates; and

WHEREAS, 20% of individuals with developmental disabilities in Maryland work in facility–based settings where, for a 2–week period, the mean number of hours worked is 17 hours and the mean income is \$66; and

WHEREAS, The practice of paying workers with disabilities less than the federal minimum wage dates back to the 1930s, a time of virtually no employment opportunities for disabled workers in the mainstream workforce; and

WHEREAS, Advancements in vocational rehabilitation, technology, and training now provide workers with disabilities with greater opportunities; and

WHEREAS, Employees with disabilities have rarely been able to transition from Section 14(c) programs to obtain integrated employment at competitive wages; now, therefore,

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

Article – Health – General

7-207.

BEGINNING OCTOBER 1, 2020, THE ADMINISTRATION MAY NOT FUND PROVIDERS THAT PAY INDIVIDUALS LESS THAN THE MINIMUM WAGE UNDER A CERTIFICATE THAT THE UNITED STATES DEPARTMENT OF LABOR ISSUES TO A WORK ACTIVITIES CENTER OR OTHER SHELTERED WORKSHOP TO ALLOW THE WORK ACTIVITIES CENTER OR WORKSHOP TO PAY AN INDIVIDUAL LESS THAN THE WAGE OTHERWISE REQUIRED FOR THE INDIVIDUAL UNDER FEDERAL LAW.

7-1012.

(A) THE ADMINISTRATION AND THE DEPARTMENT OF DISABILITIES, IN PARTNERSHIP WITH RELEVANT STATE AGENCIES, INCLUDING THE DEPARTMENT OF ECONOMIC COMPETITIVENESS AND COMMERCE, THE STATE DEPARTMENT OF EDUCATION, AND THE DIVISION OF REHABILITATION SERVICES, SHALL DEVELOP AND IMPLEMENT A PLAN TO PHASE OUT ON OR BEFORE OCTOBER 1, 2020, AUTHORIZATIONS UNDER § 3-414 OF THE LABOR AND EMPLOYMENT ARTICLE TO PAY AN EMPLOYEE WITH A DISABILITY LESS THAN THE MINIMUM WAGE OTHERWISE REQUIRED FOR THE EMPLOYEE UNDER TITLE 3, SUBTITLE 4 OF THE LABOR AND EMPLOYMENT ARTICLE.

(B) THE PLAN DEVELOPED AND IMPLEMENTED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCLUDE:

(1) BENCHMARKS AND DESIRED OUTCOMES FOR EACH YEAR OF THE PHASE-OUT;

(2) A LIST OF THE RESOURCES NECESSARY TO ENSURE THAT INDIVIDUALS WITH DISABILITIES RECEIVE SUPPORT ACCORDING TO THE NEEDS AND PREFERENCES OF THE INDIVIDUALS AND IN AN INTEGRATED SETTING, REGARDLESS OF THE NATURE OR SEVERITY OF THE INDIVIDUALS' DISABILITIES;

(3) APPLICATION FOR AND USE OF ALL FEDERAL AND STATE FUNDING PROGRAMS, INCLUDING PROGRAMS AVAILABLE UNDER MEDICAID WAIVER AMENDMENTS AND RESOURCES UNDER THE WORKFORCE INNOVATION AND OPPORTUNITY ACT, TO ASSIST INDIVIDUALS WITH DISABILITIES TO OBTAIN COMPETITIVE, INTEGRATED EMPLOYMENT; AND

(4) THE TRACKING OF OUTCOMES OF INDIVIDUALS WITH DISABILITIES ON THE BASIS OF:

(I) WAGES;

(II) UNEMPLOYMENT RATES;

(III) THE NUMBER OF INDIVIDUALS WHO MOVE FROM SUBMINIMUM WAGE POSITIONS TO COMPETITIVE, INTEGRATED EMPLOYMENT; AND

(IV) THE NUMBER OF INDIVIDUALS WHO MOVE FROM SUBMINIMUM WAGE POSITIONS TO NONPAYING ACTIVITIES.

(C) IN IMPLEMENTING THE PLAN DEVELOPED UNDER SUBSECTION (A) OF THIS SECTION, THE ADMINISTRATION AND THE DEPARTMENT OF DISABILITIES SHALL ENGAGE STATEWIDE ORGANIZATIONS, INCLUDING THE MARYLAND DEVELOPMENTAL DISABILITIES COUNCIL, AND PROVIDER AND FAMILY STATEWIDE ADVOCACY ORGANIZATIONS REPRESENTING THOSE IMPACTED BY THE PHASE-OUT.

(D) (1) ON OR BEFORE OCTOBER 1, 2017, THE ADMINISTRATION AND THE DEPARTMENT OF DISABILITIES SHALL SUBMIT THE PLAN DEVELOPED UNDER SUBSECTION (A) OF THIS SECTION TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.

(2) ON OR BEFORE OCTOBER 1, 2018, 2019, AND 2020, THE ADMINISTRATION AND THE DEPARTMENT OF DISABILITIES SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON:

(I) THE BENCHMARKS AND STATUS OF ACHIEVING THE OUTCOMES INCLUDED IN THE PLAN UNDER SUBSECTION (B)(1) OF THIS SECTION; AND

(II) RECOMMENDATIONS FOR FUNDING LEVELS OR OTHER RESOURCES NECESSARY TO IMPLEMENT THE PLAN DEVELOPED UNDER SUBSECTION (A) OF THIS SECTION.

7-1013.

(A) (1) EACH INDIVIDUAL WHO IS BEING PAID LESS THAN THE MINIMUM WAGE UNDER § 3-414 OF THE LABOR AND EMPLOYMENT ARTICLE AND THE INDIVIDUAL'S RESOURCE COORDINATOR, IN CONSULTATION WITH MEMBERS FROM THE INDIVIDUAL'S TEAM, SHALL DEVELOP AS PART OF THE INDIVIDUAL'S ANNUAL

INDIVIDUAL PLAN A SUPPLEMENTAL PLAN THAT ADDRESSES HOW COMMUNITY INTEGRATION AND EMPLOYMENT WILL BE ACCOMPLISHED.

(2) THE RESOURCE COORDINATOR SHALL USE APPROPRIATE COMMUNICATION DEVICES AND TECHNIQUES, INCLUDING SIGN LANGUAGE, TO FACILITATE THE INVOLVEMENT OF THE INDIVIDUAL IN THE DEVELOPMENT OF THE INDIVIDUAL'S SUPPLEMENTAL PLAN.

(B) AN INDIVIDUAL'S SUPPLEMENTAL PLAN SHALL INCLUDE:

(1) THE RESOURCE COORDINATOR'S RECOMMENDATION ON THE MOST INTEGRATED SETTING APPROPRIATE TO MEET THE INDIVIDUAL'S NEEDS;

(2) A DESCRIPTION OF THE SERVICES AND SUPPORTS THAT ARE REQUIRED FOR THE INDIVIDUAL TO RECEIVE SERVICES IN THE MOST INTEGRATED SETTING APPROPRIATE TO MEET THE INDIVIDUAL'S NEEDS;

(3) A LISTING OF BARRIERS THAT PREVENT THE INDIVIDUAL FROM RECEIVING THE SERVICES AND SUPPORTS REQUIRED FOR THE INDIVIDUAL TO WORK IN THE MOST INTEGRATED SETTING APPROPRIATE TO MEET THE INDIVIDUAL'S NEEDS, INCLUDING:

(I) BARRIERS TO ACCESSING FUNDING AND RESOURCES, INCLUDING FOR STAFFING, TRANSPORTATION, AND OTHER NEEDED SERVICES AND SUPPORTS;

(II) DECISION MAKING BY THE INDIVIDUAL OR THE INDIVIDUAL'S REPRESENTATIVE, AS APPROPRIATE;

(III) BARRIERS TO ACCESSING MEDICAL OR BEHAVIORAL SUPPORT NEEDS; AND

(IV) FAMILY MEMBERS' CONCERNS OR OPPOSITION; AND

(4) AN UPDATE ON THE STATUS AND PROGRESS TOWARD ADDRESSING AND RESOLVING BARRIERS IDENTIFIED UNDER ITEM (3) OF THIS SUBSECTION IN A PREVIOUS SUPPLEMENTAL PLAN.

(C) THE ADMINISTRATION SHALL DEVELOP, IN CONSULTATION WITH INTERESTED STAKEHOLDERS, THE PLANNING PROTOCOL AND FORMAT FOR THE SUPPLEMENTAL PLAN.

(D) (1) ON AN ANNUAL BASIS AND AT ANY OTHER TIME REQUESTED BY AN INDIVIDUAL WHO IS PAID LESS THAN THE MINIMUM WAGE UNDER § 3-414 OF THE LABOR AND EMPLOYMENT ARTICLE, THE INDIVIDUAL AND THE INDIVIDUAL'S RESOURCE COORDINATOR AND TEAM SHALL DISCUSS THE MOST INTEGRATED EMPLOYMENT SETTING THAT IS APPROPRIATE FOR THE INDIVIDUAL IN ACCORDANCE WITH THE FEDERAL AMERICANS WITH DISABILITIES ACT.

(2) THE RESOURCE COORDINATOR SHALL DOCUMENT IN THE INDIVIDUAL'S ANNUAL INDIVIDUAL PLAN:

(I) ANY DISCUSSIONS HELD UNDER PARAGRAPH (1) OF THIS SUBSECTION; AND

(II) ANY RECOMMENDATIONS THAT RESULTED FROM THE DISCUSSIONS.

(E) (1) THE ADMINISTRATION SHALL TRACK THE PROGRESS OF INDIVIDUALS WITH A SUPPLEMENTAL PLAN BY COLLECTING THE FOLLOWING DATA:

(I) THE WAGES OF THE INDIVIDUALS;

(II) THE UNEMPLOYMENT RATES OF THE INDIVIDUALS;

(III) THE NUMBER OF INDIVIDUALS WHO MOVE FROM SUBMINIMUM WAGE POSITIONS TO COMPETITIVE, INTEGRATED EMPLOYMENT; AND

(IV) THE NUMBER OF INDIVIDUALS WHO MOVE FROM SUBMINIMUM WAGE POSITIONS TO NONPAYING ACTIVITIES.

(2) ON OR BEFORE SEPTEMBER 1, 2018, 2019, AND 2020, THE ADMINISTRATION SHALL SUBMIT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY A SUMMARY OF THE DATA COLLECTED UNDER PARAGRAPH (1) OF THIS SUBSECTION ON A STATEWIDE AND REGIONAL BASIS.

7-1014.

A NEW EMPLOYEE EMPLOYED AT LESS THAN THE MINIMUM WAGE UNDER § 3-414 OF THE LABOR AND EMPLOYMENT ARTICLE SHALL:

(1) BE INFORMED BY THE EMPLOYEE'S EMPLOYER OF ALL OPPORTUNITIES TO OBTAIN COMPETITIVE, INTEGRATED EMPLOYMENT;

(2) HAVE A ~~PLAN OF HABILITATION~~ SUPPLEMENTAL PLAN UNDER ~~§ 7-1006~~ § 7-1013 OF THIS SUBTITLE THAT INCLUDES:

- (I) A GOAL TO ACHIEVE A SPECIFIC EMPLOYMENT OUTCOME;**
- (II) A DESCRIPTION OF THE SUPPORTS NEEDED TO ACHIEVE THE GOAL;**
- (III) A PLAN FOR MONITORING PROGRESS TOWARD THE GOAL;**
- (IV) THE BARRIERS TO COMPETITIVE, INTEGRATED EMPLOYMENT; AND**
- (V) GOALS AND ACTIVITIES FOR THE EMPLOYEE WHEN WORK IS NOT AVAILABLE OR THE EMPLOYEE CHOOSES NOT TO WORK ON A SPECIFIC DAY OR DURING A SPECIFIC SHIFT;**

(3) WHEN CHOOSING TO WORK, BE ENGAGED IN WORK THAT IS CONSISTENT WITH THE EMPLOYEE’S UNIQUE STRENGTHS, RESOURCES, PRIORITIES, CONCERNS, ABILITIES, CAPABILITIES, INTERESTS, AND INFORMED CHOICE;

(4) CHOOSE THE EMPLOYER AND THE EMPLOYMENT; AND

(5) BE INFORMED OF THE EMPLOYEE’S RIGHT TO CHOOSE WHEN TO WORK.

Article – Labor and Employment

3-414.

(a) In this section, “federal certificate” means a certificate that the United States Department of Labor issues to a work activities center or other sheltered workshop to allow the workshop to pay an individual less than the wage otherwise required for that individual under the federal Act.

~~(b) This section does not apply to a blind individual who works in a sheltered workshop of Blind Industries and Services of Maryland.~~

~~(a)~~ **(B) (1)** Subject to the limitations in this section, the Commissioner may ~~NOT~~ authorize a work activities center or other sheltered workshop to pay [a mentally or physically disabled employee of the workshop] **AN EMPLOYEE WITH A DISABILITY** less than the minimum wage otherwise required under this subtitle for the employee ~~UNLESS:~~

~~(1) THE COMMISSIONER AUTHORIZED THE WORKSHOP BEFORE OCTOBER 1, 2016, TO PAY THE EMPLOYEE WITH A DISABILITY LESS THAN THE MINIMUM WAGE OTHERWISE REQUIRED UNDER THIS SUBTITLE FOR THE EMPLOYEE; AND~~

~~(2) THE COMMISSIONER PROHIBITS THE WORKSHOP FROM PAYING ADDITIONAL EMPLOYEES LESS THAN THE MINIMUM WAGE OTHERWISE REQUIRED UNDER THIS SUBTITLE.~~

(2) THE COMMISSIONER MAY NOT AUTHORIZE A WORK ACTIVITIES CENTER OR OTHER SHELTERED WORKSHOP TO PAY AN EMPLOYEE WITH A DISABILITY LESS THAN THE MINIMUM WAGE UNDER PARAGRAPH (1) OF THIS SUBSECTION IF THE WORK ACTIVITIES CENTER OR WORKSHOP WAS NOT AUTHORIZED TO DO SO BEFORE OCTOBER 1, 2016.

(3) A WORK ACTIVITIES CENTER OR OTHER SHELTERED WORKSHOP MAY PAY A NEW EMPLOYEE WITH A DISABILITY LESS THAN THE MINIMUM WAGE UNDER PARAGRAPH (1) OF THIS SUBSECTION ONLY IF THE REQUIREMENTS OF § 7-1014 OF THE HEALTH – GENERAL ARTICLE ARE MET.

~~(C)~~ (1) To authorize a work activities center or other sheltered workshop to pay less than the minimum wage, the Commissioner shall:

(i) issue a State certificate that sets wages for employees of the workshop;

(ii) accept a federal certificate for the workshop; or

(iii) grant an exception for the workshop but only if:

1. the Commissioner has not issued a State certificate for the workshop;

2. the workshop is not eligible for a federal certificate; and

3. the Commissioner investigates and holds a hearing on the exception.

(2) The Commissioner shall accept a federal certificate if a work activities center or other sheltered workshop submits that certificate to the Commissioner within 10 days after the workshop receives the certificate.

~~(D)~~ (1) Each certificate that the Commissioner issues under this section shall:

- ~~(I)~~ state the period for which the certificate is in effect;~~AND~~
- ~~(H)~~ ~~EXPIRE NO LATER THAN OCTOBER 1, 2019.~~

(2) The acceptance of a federal certificate does not apply automatically to an individual whom a work activities center or other sheltered workshop continues to employ after the individual completes a training program that the workshop runs.

~~(E)~~ (E) (1) The Commissioner may revoke acceptance of a federal certificate if:

(i) the United States Department of Labor revokes the federal certificate; or

(ii) at any time before revocation by the Department of Labor and after an investigation and hearing, the Commissioner finds good cause to revoke the acceptance.

(2) The Commissioner shall send notice of a hearing under this subsection, by certified mail, to the holder of the federal certificate at least 30 days before the hearing.

~~§ 414.1.~~

~~(A) IN THIS SECTION, "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.~~

~~(B) THE DEPARTMENT, IN PARTNERSHIP WITH RELEVANT STATE AGENCIES, INCLUDING THE DEPARTMENT OF ECONOMIC COMPETITIVENESS AND COMMERCE, THE DEPARTMENT OF DISABILITIES, THE DEVELOPMENTAL DISABILITIES ADMINISTRATION, THE STATE DEPARTMENT OF EDUCATION, AND THE DIVISION OF REHABILITATION SERVICES, SHALL DEVELOP AND IMPLEMENT A PLAN TO PHASE OUT BY OCTOBER 1, 2019, AUTHORIZATIONS UNDER § 3-414 OF THIS SUBTITLE TO PAY AN EMPLOYEE WITH A DISABILITY LESS THAN THE MINIMUM WAGE OTHERWISE REQUIRED FOR THE EMPLOYEE UNDER THIS SUBTITLE.~~

~~(C) THE PLAN DEVELOPED AND IMPLEMENTED UNDER SUBSECTION (B) OF THIS SECTION SHALL INCLUDE:~~

~~(1) BENCHMARKS AND DESIRED OUTCOMES FOR EACH YEAR OF THE PHASE-OUT;~~

~~(2) A LIST OF THE RESOURCES NECESSARY TO ENSURE THAT INDIVIDUALS WITH DISABILITIES RECEIVE SUPPORT ACCORDING TO THE NEEDS AND PREFERENCES OF THE INDIVIDUALS WITH DISABILITIES IN AN INTEGRATED~~

~~SETTING, REGARDLESS OF THE NATURE OR SEVERITY OF THE INDIVIDUALS' DISABILITIES;~~

~~(3) APPLICATION TO AND USE OF ALL FEDERAL AND STATE FUNDING PROGRAMS, INCLUDING MEDICAID WAIVER AMENDMENTS AND RESOURCES UNDER THE WORKFORCE INNOVATION AND OPPORTUNITY ACT, TO ASSIST INDIVIDUALS WITH DISABILITIES TO OBTAIN COMPETITIVE, INTEGRATED EMPLOYMENT; AND~~

~~(4) THE TRACKING OF OUTCOMES OF INDIVIDUALS WITH DISABILITIES ON THE BASIS OF:~~

~~(I) WAGES;~~

~~(II) UNEMPLOYMENT RATES;~~

~~(III) THE NUMBER OF INDIVIDUALS WHO MOVE FROM SUBMINIMUM WAGE POSITIONS TO COMPETITIVE, INTEGRATED EMPLOYMENT; AND~~

~~(IV) THE NUMBER OF INDIVIDUALS WHO MOVE FROM SUBMINIMUM WAGE POSITIONS TO NONPAYING ACTIVITIES.~~

~~(D) THE DEPARTMENT SHALL ENGAGE STATEWIDE ORGANIZATIONS REPRESENTING THOSE IMPACTED BY THE PHASE-OUT, INCLUDING THE MARYLAND DEVELOPMENTAL DISABILITIES COUNCIL AND ADVOCACY, PROVIDER, FAMILY, AND OTHER STATEWIDE ORGANIZATIONS, IN IMPLEMENTING THE PLAN DEVELOPED UNDER SUBSECTION (B) OF THIS SECTION.~~

~~(E) ON OR BEFORE OCTOBER 1 EACH YEAR, THE DEPARTMENT SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON THE BENCHMARKS AND RESULTS OF OUTCOMES DESCRIBED IN PARAGRAPH (C) OF THIS SECTION AND RECOMMENDATIONS FOR FUNDING LEVELS OR OTHER RESOURCES NECESSARY TO IMPLEMENT THE PLAN DEVELOPED UNDER SUBSECTION (B) OF THIS SECTION.~~

~~Article State Finance and Procurement~~

~~SUBTITLE 8. MISCELLANEOUS.~~

~~2-801.~~

~~BEGINNING JANUARY 1, 2019, A WORK ACTIVITIES CENTER OR OTHER SHELTERED WORKSHOP THAT PAYS AN EMPLOYEE WITH A DISABILITY LESS THAN THE MINIMUM WAGE OTHERWISE REQUIRED UNDER TITLE 3, SUBTITLE 4 OF THE LABOR AND EMPLOYMENT ARTICLE MAY NOT RECEIVE STATE FUNDS.~~

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

Article – Health – General

[7–1012.

(a) The Administration and the Department of Disabilities, in partnership with relevant State agencies, including the Department of Economic Competitiveness and Commerce, the State Department of Education, and the Division of Rehabilitation Services, shall develop and implement a plan to phase out on or before October 1, 2020, authorizations under § 3–414 of the Labor and Employment Article to pay an employee with a disability less than the minimum wage otherwise required for the employee under Title 3, Subtitle 4 of the Labor and Employment Article.

(b) The plan developed and implemented under subsection (a) of this section shall include:

(1) Benchmarks and desired outcomes for each year of the phase-out;

(2) A list of the resources necessary to ensure that individuals with disabilities receive support according to the needs and preferences of the individuals and in an integrated setting, regardless of the nature or severity of the individuals' disabilities;

(3) Application for and use of all federal and State funding programs, including programs available under Medicaid waiver amendments and resources under the Workforce Innovation and Opportunity Act, to assist individuals with disabilities to obtain competitive, integrated employment; and

(4) The tracking of outcomes of individuals with disabilities on the basis of:

(i) Wages;

(ii) Unemployment rates;

(iii) The number of individuals who move from subminimum wage positions to competitive, integrated employment; and

(iv) The number of individuals who move from subminimum wage positions to nonpaying activities.

(c) In implementing the plan developed under subsection (a) of this section, the Administration and the Department of Disabilities shall engage statewide organizations, including the Maryland Developmental Disabilities Council, and provider and family statewide advocacy organizations representing those impacted by the phase-out.

(d) (1) On or before October 1, 2017, the Administration and the Department of Disabilities shall submit the plan developed under subsection (a) of this section to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly.

(2) On or before October 1, 2018, 2019, and 2020, the Administration and the Department of Disabilities shall report to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly on:

(i) The benchmarks and status of achieving the outcomes included in the plan under subsection (b)(1) of this section; and

(ii) Recommendations for funding levels or other resources necessary to implement the plan developed under subsection (a) of this section.]

[7–1013.

(a) (1) Each individual who is being paid less than the minimum wage under § 3–414 of the Labor and Employment Article and the individual’s resource coordinator, in consultation with members from the individual’s team, shall develop as part of the individual’s annual individual plan a supplemental plan that addresses how community integration and employment will be accomplished.

(2) The resource coordinator shall use appropriate communication devices and techniques, including sign language, to facilitate the involvement of the individual in the development of the individual’s supplemental plan.

(b) An individual’s supplemental plan shall include:

(1) The resource coordinator’s recommendation on the most integrated setting appropriate to meet the individual’s needs;

(2) A description of the services and supports that are required for the individual to receive services in the most integrated setting appropriate to meet the individual’s needs;

(3) A listing of barriers that prevent the individual from receiving the services and supports required for the individual to work in the most integrated setting appropriate to meet the individual’s needs, including:

(i) Barriers to accessing funding and resources, including for staffing, transportation, and other needed services and supports;

(ii) Decision making by the individual or the individual’s representative, as appropriate;

(iii) Barriers to accessing medical or behavioral support needs; and

(iv) Family members' concerns or opposition; and

(4) An update on the status and progress toward addressing and resolving barriers identified under item (3) of this subsection in a previous supplemental plan.

(c) The Administration shall develop, in consultation with interested stakeholders, the planning protocol and format for the supplemental plan.

(d) (1) On an annual basis and at any other time requested by an individual who is paid less than the minimum wage under § 3-414 of the Labor and Employment Article, the individual and the individual's resource coordinator and team shall discuss the most integrated employment setting that is appropriate for the individual in accordance with the federal Americans with Disabilities Act.

(2) The resource coordinator shall document in the individual's annual individual plan:

(i) Any discussions held under paragraph (1) of this subsection; and

(ii) Any recommendations that resulted from the discussions.

(e) (1) The Administration shall track the progress of individuals with a supplemental plan and by collecting the following data:

(i) The wages of the individuals;

(ii) The unemployment rates of the individuals;

(iii) The number of individuals who move from subminimum wage positions to competitive, integrated employment; and

(iv) The number of individuals who move from subminimum wage positions to nonpaying activities.

(2) On or before September 1, 2018, 2019, and 2020, the Administration shall submit to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly a summary of the data collected under paragraph (1) of this subsection on a statewide and regional basis.]

[7-1014.

A new employee employed at less than the minimum wage under § 3-414 of the Labor and Employment Article shall:

- (1) Be informed by the employee's employer of all opportunities to obtain competitive, integrated employment;
- (2) Have a plan of habilitation under § 7-1006 of this subtitle that includes:
 - (i) A goal to achieve a specific employment outcome;
 - (ii) A description of the supports needed to achieve the goal;
 - (iii) A plan for monitoring progress toward the goal;
 - (iv) The barriers to competitive, integrated employment; and
 - (v) Goals and activities for the employee when work is not available or the employee chooses not to work on a specific day or during a specific shift;
- (3) When choosing to work, be engaged in work that is consistent with the employee's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;
- (4) Choose the employer and the employment; and
- (5) Be informed of the employee's right to choose when to work.]

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

Article – Labor and Employment

~~§~~3-414.

(a) In this section, “federal certificate” means a certificate that the United States Department of Labor issues to a work activities center or other sheltered workshop to allow the workshop to pay an individual less than the wage otherwise required for that individual under the federal Act.

~~(b) This section does not apply to a blind individual who works in a sheltered workshop of Blind Industries and Services of Maryland.~~

~~(b)~~ (b) **[(1)** Subject to the limitations in this section, the Commissioner may ~~not~~ authorize a work activities center or other sheltered workshop to pay an employee with a disability less than the minimum wage otherwise required under this subtitle for the employee ~~unless~~.

~~(1) the Commissioner authorized the workshop before October 1, 2016, to pay the employee with a disability less than the minimum wage otherwise required under this subtitle for the employee; and~~

~~(2) the Commissioner prohibits the workshop from paying additional employees less than the minimum wage otherwise required under this subtitle.~~

(2) (1) [The] BEGINNING OCTOBER 1, 2020, THE Commissioner may not authorize a work activities center or other sheltered workshop to pay an employee with a disability less than the minimum wage [under paragraph (1) of this subsection if the work activities center or workshop was not authorized to do so before October 1, 2016.] OTHERWISE REQUIRED UNDER THIS SUBTITLE FOR THE EMPLOYEE.

(2) BEGINNING OCTOBER 1, 2020, A WORK ACTIVITIES CENTER OR WORKSHOP MAY PAY AN EMPLOYEE WITH A DISABILITY LESS THAN THE FEDERAL PREVAILING WAGE OF PAY TO THE EXTENT AUTHORIZED BY FEDERAL LAW IF THE WORK ACTIVITIES CENTER OR OTHER SHELTERED WORKSHOP:

(I) WAS AUTHORIZED BY THE COMMISSIONER BEFORE OCTOBER 1, 2016, TO PAY AN EMPLOYEE WITH A DISABILITY LESS THAN THE MINIMUM WAGE THAT WAS OTHERWISE REQUIRED UNDER THIS SUBTITLE FOR THE EMPLOYEE THROUGH THE ACCEPTANCE OF A FEDERAL CERTIFICATE; AND

(II) THE WORK ACTIVITIES CENTER OR WORKSHOP MAINTAINS THE FEDERAL CERTIFICATE.

[(3) A work activities center or other sheltered workshop may pay a new employee with a disability less than the minimum wage under paragraph (1) of this subsection only if the requirements of § 7-1014 of the Health – General Article are met.]

~~(d)~~ ~~(1) (c)~~ [(1) To authorize a work activities center or other sheltered workshop to pay less than the minimum wage, the Commissioner shall:

(i) issue a State certificate that sets wages for employees of the workshop;

(ii) accept a federal certificate for the workshop; or

(iii) grant an exception for the workshop but only if:

1. the Commissioner has not issued a State certificate for the workshop;

2. the workshop is not eligible for a federal certificate; and

3. the Commissioner investigates and holds a hearing on the exception.

(2) The Commissioner shall accept a federal certificate if a work activities center or other sheltered workshop submits that certificate to the Commissioner within 10 days after the workshop receives the certificate.

- ~~(e)~~ (d) (1) Each certificate that the Commissioner issues under this section shall:
 - ~~(i)~~ state the period for which the certificate is in effect; ~~and~~
 - ~~(ii)~~ ~~expire no later than October 1, 2019.~~

(2) The acceptance of a federal certificate does not apply automatically to an individual whom a work activities center or other sheltered workshop continues to employ after the individual completes a training program that the workshop runs.

- ~~(f)~~ (e) (1) The Commissioner may revoke acceptance of a federal certificate if:
 - (i) the United States Department of Labor revokes the federal certificate; or
 - (ii) at any time before revocation by the Department of Labor and after an investigation and hearing, the Commissioner finds good cause to revoke the acceptance.

(2) The Commissioner shall send notice of a hearing under this subsection, by certified mail, to the holder of the federal certificate at least 30 days before the hearing. ~~]~~

~~[3-414.1.~~

~~(a) In this section, "Department" means the Department of Labor, Licensing, and Regulation.~~

~~(b) The Department in partnership with relevant State agencies, including the Department of Economic Competitiveness and Commerce, the Department of Disabilities, the Developmental Disabilities Administration, the State Department of Education, and the Division of Rehabilitation Services, shall develop and implement a plan to phase out by October 1, 2019, authorizations under § 3-414 of this subtitle to pay an employee with a disability less than the minimum wage otherwise required for the employee under this subtitle.~~

~~(c) The plan developed and implemented under subsection (b) of this section shall include:~~

- ~~(1) benchmarks and desired outcomes for each year of the phase-out;~~

~~(2) a list of the resources necessary to ensure that individuals with disabilities receive support according to their needs and preferences in an integrated setting, regardless of the nature or severity of the individuals' disabilities;~~

~~(3) application to and use of all federal and State funding programs, including Medicaid waiver amendments and resources under the Workforce Innovation and Opportunity Act, to assist individuals with disabilities to obtain competitive, integrated employment; and~~

~~(4) the tracking of outcomes of individuals with disabilities on the basis of:~~

~~(i) wages;~~

~~(ii) unemployment rates;~~

~~(iii) the number of individuals who move from subminimum wage positions to competitive, integrated employment; and~~

~~(iv) the number of individuals who move from subminimum wage positions to nonpaying activities.~~

~~(d) The Department shall engage statewide organizations representing those impacted by the phase out, including the Maryland Developmental Disabilities Council and advocacy, provider, family, and other statewide organizations, in implementing the plan developed under subsection (b) of this section.~~

~~(e) On or before October 1 each year, the Department shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly on the benchmarks and results of outcomes described in paragraph (c) of this section and recommendations for funding levels or other resources necessary to implement the plan developed under subsection (b) of this section.~~

SECTION 4. AND BE IT FURTHER ENACTED, That:

(a) The Developmental Disabilities Administration and the Department of Disabilities shall:

(1) conduct a study of employees who earn at least the federal minimum wage but less than the federal prevailing wage of pay for a nondisabled employee under a federal certificate that authorizes the payment of a wage that is less than the wage otherwise required for the employees under federal law;

(2) determine:

(i) the number and demographics of employees employed between the federal minimum wage and federal prevailing wage of pay for nondisabled employees;

(ii) whether the employment of the employees complies with the integration requirements under 42 C.F.R. § 441.71;

(iii) the type of employment of the employees, including whether employees are employed under federal Ability One contracts;

(iv) whether any changes in federal law or policy regarding the payment of lower wages to the employees occurred after October 1, 2016, or are likely to occur and, if changes have occurred or are likely to occur, what the changes were or are likely to be; and

(v) whether there are prospects for the employees to obtain employment at similar rates of pay without federal certificates; and

(3) make any recommendations for State legislative or policy changes regarding the employment of individuals with disabilities.

(b) In carrying out the duties described in subsection (a) of this section, the Developmental Disabilities Administration and the Department of Disabilities shall consult:

(1) the State agencies specified in § 7-1012(a) of the Health – General Article, as enacted by Section 1 of this Act;

(2) Maryland Works;

(3) People on the Go;

(4) the Maryland Association of Community Services;

(5) the National Federation of the Blind;

(6) the Association of People Supporting Employment;

(7) the ARC Maryland; and

(8) any other relevant stakeholders.

(c) On or before October 1, 2017, the Developmental Disabilities Administration and the Department of Disabilities shall report their findings and recommendations to the Governor and, in accordance with § 2-1246 of the State Government Article, the Senate Finance Committee, the House Economic Matters Committee, and the House Health and Government Operations Committee.

SECTION ~~3~~ 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect October 1, ~~2019~~ 2021.

SECTION 6. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take effect October 1, 2020.

SECTION ~~4~~ 7. AND BE IT FURTHER ENACTED, That, except as provided in ~~Section 3~~ Sections 5 and 6 of this Act, this Act shall take effect October 1, 2016.

Approved by the Governor, May 19, 2016.