

Chapter 2

(Senate Bill 555)

AN ACT concerning

Fair Wage Act of 2023

FOR the purpose of increasing the State minimum wage rate ~~in effect for certain periods of time; increasing, except under certain circumstances, the State minimum wage rate in effect for certain periods of time based on annual growth in a certain consumer price index; altering~~ repealing the authority of the Board of Public Works to temporarily suspend an increase in the minimum wage rate; repealing the requirement that the Governor's budgets for certain fiscal years include certain provider rate increases; and generally relating to the State minimum wage rate.

BY repealing and reenacting, with amendments,

Article – Health – General

Section 7–307, 16–201.3, and 16–201.4

Annotated Code of Maryland

(2019 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, with amendments,

Article – Labor and Employment

Section 3–413 ~~and 3–413.1~~

Annotated Code of Maryland

(2016 Replacement Volume and 2022 Supplement)

BY repealingArticle – Labor and EmploymentSection 3–413.1Annotated Code of Maryland(2016 Replacement Volume and 2022 Supplement)

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

Article – Health – General

7–307.

(a) (1) In this section the following words have the meanings indicated.

(2) “Community direct service worker” means an employee of a community provider that provides treatment or services to developmentally disabled individuals.

(3) “Community provider” means a community–based agency or program funded by the Administration to serve individuals with developmental disabilities.

(4) “Rate” means the reimbursement rate paid by the Department to a community provider from the State General Fund, Maryland Medical Assistance Program funds, other State or federal funds, or a combination of funds.

(b) Notwithstanding the provisions of this title or any other provision of law, the Department shall reimburse community providers as provided in this section.

(c) Subject to subsection (d) of this section, the Department shall increase the rate of reimbursement for community service providers each fiscal year by the amount of rate increase included in the State budget for that fiscal year.

(d) (1) The Governor’s proposed budget for fiscal year 2019 shall include a 3.5% rate increase for community service providers over the funding provided in the legislative appropriation for Object 08 Contractual Services in Program M00M01.02 Community Services for fiscal year 2018.

(2) The Governor’s proposed budget for fiscal year 2021 shall include a 4% rate increase for community service providers over the funding provided in the legislative appropriation for Object 08 Contractual Services in Program M00M01.02 Community Services for fiscal year 2020.

(3) The Governor’s proposed budget for fiscal year 2022 shall include a 4% rate increase for community service providers over the funding provided in the legislative appropriation for Object 08 Contractual Services in Program M00M01.02 Community Services for fiscal year 2021.

(4) The Governor’s proposed budget for fiscal year 2023 shall include a 4% rate increase for community service providers over the funding provided in the legislative appropriation for Object 08 Contractual Services in Program M00M01.02 Community Services for fiscal year 2022.

(5) The Governor’s proposed budget for fiscal year 2024 shall include a 4% rate increase for community service providers over the funding provided in the legislative appropriation for Object 08 Contractual Services in Program M00M01.02 Community Services for fiscal year 2023.

[(6) The Governor’s proposed budget for fiscal year 2025 shall include a 4% rate increase for community service providers over the funding provided in the legislative appropriation for Object 08 Contractual Services in Program M00M01.02 Community Services for fiscal year 2024.

(7) The Governor’s proposed budget for fiscal year 2026 shall include a 4% rate increase for community service providers over the funding provided in the legislative

appropriation for Object 08 Contractual Services in Program M00M01.02 Community Services for fiscal year 2025.】

(e) The Governor’s proposed budget for fiscal year 2016 and thereafter for community service providers shall be presented in the same manner, including object and program information, as provided for in the fiscal year 2015 budget.

(f) A portion of the funds in subsection (e) of this section may be allocated to address the impact of an increase in the State minimum wage on wages and benefits of direct support workers employed by community providers licensed by the Developmental Disabilities Administration.

16–201.3.

(a) (1) In this section the following words have the meanings indicated.

(2) “Community provider” means a community–based agency or program funded by the Behavioral Health Administration or the Medical Care Programs Administration to serve individuals with mental disorders, substance–related disorders, or a combination of these disorders.

(3) “Rate” means the reimbursement rate paid by the Department to a community provider from the State General Fund, Maryland Medical Assistance Program funds, other State or federal funds, or a combination of these funds.

(b) This section does not apply to reimbursement for any service provided by a community provider whose rates are regulated by the Health Services Cost Review Commission.

(c) It is the intent of the General Assembly that a substantial portion of the rate adjustment provided under subsection (d) of this section be used to:

(1) Compensate direct care staff and licensed clinicians employed by community providers; and

(2) Improve the quality of programming provided by community providers.

(d) (1) The Governor’s proposed budget for fiscal year 2019 and fiscal year 2020 shall include a 3.5% rate increase for community providers over the funding provided in the legislative appropriation for the immediately preceding fiscal year for each of the following:

(i) Object 08 Contractual Services in Program M00Q01.10 Medicaid Behavioral Health Provider Reimbursement – Medical Care Programs Administration;

(ii) Object 08 Contractual Services in Program M00L01.02 Community Services – Behavioral Health Administration; and

(iii) Object 08 Contractual Services in Program M00L01.03 Community Services for Medicaid State Fund Recipients – Behavioral Health Administration.

(2) The Governor’s proposed budget for fiscal year 2021 shall include a 4% rate increase for community providers over the funding provided in the legislative appropriation for the immediately preceding fiscal year for each of the following:

(i) Object 08 Contractual Services in Program M00Q01.10 Medicaid Behavioral Health Provider Reimbursement – Medical Care Programs Administration;

(ii) Object 08 Contractual Services in Program M00L01.02 Community Services – Behavioral Health Administration; and

(iii) Object 08 Contractual Services in Program M00L01.03 Community Services for Medicaid State Fund Recipients – Behavioral Health Administration.

(3) The Governor’s proposed budget for fiscal year 2022 shall include a 3.5% rate increase for community providers over the funding provided in the legislative appropriation for the immediately preceding fiscal year for each of the following:

(i) Object 08 Contractual Services in Program M00Q01.10 Medicaid Behavioral Health Provider Reimbursement – Medical Care Programs Administration;

(ii) Object 08 Contractual Services in Program M00L01.02 Community Services – Behavioral Health Administration; and

(iii) Object 08 Contractual Services in Program M00L01.03 Community Services for Medicaid State Fund Recipients – Behavioral Health Administration.

(4) The Governor’s proposed budget for fiscal year 2023 shall include a 3.25% rate increase for community providers over the funding provided in the legislative appropriation for the immediately preceding fiscal year for each of the following:

(i) Object 08 Contractual Services in Program M00Q01.10 Medicaid Behavioral Health Provider Reimbursement – Medical Care Programs Administration;

(ii) Object 08 Contractual Services in Program M00L01.02 Community Services – Behavioral Health Administration; and

(iii) Object 08 Contractual Services in Program M00L01.03 Community Services for Medicaid State Fund Recipients – Behavioral Health Administration.

(5) The Governor's proposed budget for fiscal year 2024 shall include a 3% rate increase for community providers over the funding provided in the legislative appropriation for the immediately preceding fiscal year for each of the following:

(i) Object 08 Contractual Services in Program M00Q01.10 Medicaid Behavioral Health Provider Reimbursement – Medical Care Programs Administration;

(ii) Object 08 Contractual Services in Program M00L01.02 Community Services – Behavioral Health Administration; and

(iii) Object 08 Contractual Services in Program M00L01.03 Community Services for Medicaid State Fund Recipients – Behavioral Health Administration.

(6) [The Governor's proposed budget for fiscal year 2025 shall include a 4% rate increase for community providers over the funding provided in the legislative appropriation for the immediately preceding fiscal year for each of the following:

(i) Object 08 Contractual Services in Program M00Q01.10 Medicaid Behavioral Health Provider Reimbursement – Medical Care Programs Administration;

(ii) Object 08 Contractual Services in Program M00L01.02 Community Services – Behavioral Health Administration; and

(iii) Object 08 Contractual Services in Program M00L01.03 Community Services for Medicaid State Fund Recipients – Behavioral Health Administration.

(7) The Governor's proposed budget for fiscal year 2026 shall include a 4% rate increase for community providers over the funding provided in the legislative appropriation for the immediately preceding fiscal year for each of the following:

(i) Object 08 Contractual Services in Program M00Q01.10 Medicaid Behavioral Health Provider Reimbursement – Medical Care Programs Administration;

(ii) Object 08 Contractual Services in Program M00L01.02 Community Services – Behavioral Health Administration; and

(iii) Object 08 Contractual Services in Program M00L01.03 Community Services for Medicaid State Fund Recipients – Behavioral Health Administration.

(8)] The Governor's proposed budget for fiscal year 2019 and each fiscal year thereafter for community providers shall be presented in the same manner, including object and program information, as in the fiscal year 2018 budget.

(e) (1) The Behavioral Health Administration and the Medical Care Programs Administration jointly shall:

(i) Conduct an independent cost-driven, rate-setting study to set community provider rates for community-based behavioral health services that includes a rate analysis and an impact study that considers the actual cost of providing community-based behavioral health services;

(ii) Develop and implement a payment system incorporating the findings of the rate-setting study conducted under item (i) of this paragraph, including projected costs of implementation and recommendations to address any potential shortfall in funding; and

(iii) Consult with stakeholders, including community providers and individuals receiving services, in conducting the rate-setting study and developing the payment system required by this paragraph.

(2) The Administration, on or before September 30, 2019, shall complete the study required under paragraph (1)(i) of this subsection.

(3) The Administration shall adopt regulations to implement the payment system required by paragraph (1) of this subsection.

(f) If services of community providers are provided through managed care organizations, the managed care organizations shall:

(1) Pay the rate in effect during the immediately preceding fiscal year for the first fiscal year the managed care organizations provide the services; and

(2) Adjust the rate for community providers each fiscal year by at least the same amount that otherwise would have been required under subsection (d) of this section.

(g) Increased funding provided under subsection (d) of this section may be used only to increase the rates paid to:

(1) Community providers accredited by a State-approved accrediting body and licensed by the State; and

(2) Health care providers who are acting within the scopes of practice of the health care providers' licenses or certificates as specified under the Health Occupations Article.

(h) (1) On or before December 1, 2018, the Department shall submit an interim report to the Governor and, in accordance with § 2–1257 of the State Government Article, the General Assembly on the delivery system through which community–based behavioral health services should be provided and any preliminary recommendations regarding the payment system required under this section.

(2) On or before December 1, 2019, and on or before December 1 each year thereafter, the Department shall submit a report to the Governor and, in accordance with § 2–1257 of the State Government Article, the General Assembly on the impact of the rate adjustments and the payment system required under this section on community providers, including the impact on:

(i) The wages and salaries paid and the benefits provided to direct care staff and licensed clinicians employed by community providers;

(ii) The tenure and turnover of direct care staff and licensed clinicians employed by community providers; and

(iii) The ability of community providers to recruit qualified direct care staff and licensed clinicians.

(3) The Department may require a community provider to submit, in the form and manner required by the Department, information that the Department considers necessary for completion of the report required under paragraph (2) of this subsection.

16–201.4.

(a) (1) In this section the following words have the meanings indicated.

(2) “Provider” means a provider of:

(i) Nursing home services;

(ii) Medical day care services;

(iii) Private duty nursing services;

(iv) Personal care services;

(v) Home– and community–based services; and

(vi) Services provided through the Community First Choice program.

(3) “Rate” means the reimbursement rate paid by the Department to providers of nursing home, medical day care, private duty nursing, personal care, and home– and community–based services and services provided through the Community First

Choice program from the State General Fund, Maryland Medical Assistance Program funds, other State or federal funds, or a combination of these funds.

(b) (1) The Governor's proposed budget for fiscal year 2021 shall include a 4% rate increase for providers over the funding provided in the legislative appropriation for the immediately preceding fiscal year in Program M00Q01.03 Medical Care Provider Reimbursements – Medical Care Programs Administration and Program M00Q01.07 Maryland Children's Health Program – Medical Care Programs Administration.

(2) The Governor's proposed budget for fiscal year 2022 shall include a 4% rate increase for providers over the funding provided in the legislative appropriation for the immediately preceding fiscal year in Program M00Q01.03 Medical Care Provider Reimbursements – Medical Care Programs Administration and Program M00Q01.07 Maryland Children's Health Program – Medical Care Programs Administration.

(3) The Governor's proposed budget for fiscal year 2023 shall include a 4% rate increase for providers over the funding provided in the legislative appropriation for the immediately preceding fiscal year in Program M00Q01.03 Medical Care Provider Reimbursements – Medical Care Programs Administration and Program M00Q01.07 Maryland Children's Health Program – Medical Care Programs Administration.

(4) The Governor's proposed budget for fiscal year 2024 shall include a 4% rate increase for providers over the funding provided in the legislative appropriation for the immediately preceding fiscal year in Program M00Q01.03 Medical Care Provider Reimbursements – Medical Care Programs Administration and Program M00Q01.07 Maryland Children's Health Program – Medical Care Programs Administration.

(5) [The Governor's proposed budget for fiscal year 2025 shall include a 4% rate increase for providers over the funding provided in the legislative appropriation for the immediately preceding fiscal year in Program M00Q01.03 Medical Care Provider Reimbursements – Medical Care Programs Administration and Program M00Q01.07 Maryland Children's Health Program – Medical Care Programs Administration.

(6) The Governor's proposed budget for fiscal year 2026 shall include a 4% rate increase for providers over the funding provided in the legislative appropriation for the immediately preceding fiscal year in Program M00Q01.03 Medical Care Provider Reimbursements – Medical Care Programs Administration and Program M00Q01.07 Maryland Children's Health Program – Medical Care Programs Administration.

(7)] The Governor's proposed budget for fiscal year 2021 and each fiscal year thereafter shall be presented in the same manner, including object and program information, as in the fiscal year 2020 budget.

Article – Labor and Employment

(a) (1) In this section the following words have the meanings indicated.

~~(2) “CONSUMER PRICE INDEX” MEANS THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE WASHINGTON ARLINGTON ALEXANDRIA, DC VA MD WV METROPOLITAN AREA OR A SUCCESSOR METROPOLITAN AREA INDEX PUBLISHED BY THE FEDERAL BUREAU OF LABOR STATISTICS.~~

~~(3)~~ (2) “Employer” includes a governmental unit.

~~[(3)]~~ (4) “Small employer” means an employer that employs 14 or fewer employees.

(b) Except as provided in subsection (d) of this section and §§ 3–413.1 and 3–414 of this subtitle, each employer shall pay:

(1) to each employee who is subject to both the federal Act and this subtitle, at least the greater of:

- (i) the minimum wage for that employee under the federal Act; or
- (ii) the State minimum wage set under subsection (c) of this section;

and

(2) to each other employee who is subject to this subtitle, at least the greater of:

- (i) the highest minimum wage under the federal Act; or
- (ii) the State minimum wage set under subsection (c) of this section.

(c) (1) Subject to § 3–413.1 of this subtitle and except as provided in paragraph (2) of this subsection, the State minimum wage rate is:

- (i) [for the 12–month period beginning July 1, 2017, \$9.25 per hour;
- (ii) for the 18–month period beginning July 1, 2018, \$10.10 per hour;
- (iii) for the 12–month period beginning January 1, 2020, \$11.00 per hour;
- (iv) for the 12–month period beginning January 1, 2021, \$11.75 per hour;
- (v) for the 12–month period beginning January 1, 2022, \$12.50 per hour;

(vi)] for the ~~[12 month]~~ ~~9 MONTH~~ period beginning January 1, 2023, \$13.25 per hour; AND

[(vii) for the 12-month period beginning January 1, 2024, \$14.00 per hour; and

(viii)] (II) ~~FOR THE 21 MONTH PERIOD~~ beginning [January 1, 2025] ~~OCTOBER 1, 2023~~ JANUARY 1, 2024, \$15.00 per hour; ~~AND~~

~~(III) FOR THE 12 MONTH PERIOD BEGINNING JULY 1, 2025, AND EACH SUBSEQUENT 12 MONTH PERIOD, THE RATE DETERMINED BY THE COMMISSIONER UNDER PARAGRAPH (2)(II) OF THIS SUBSECTION.~~

~~(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH, FOR THE 12 MONTH PERIOD BEGINNING JULY 1, 2025, AND EACH SUBSEQUENT 12 MONTH PERIOD, THE STATE MINIMUM WAGE RATE SHALL BE INCREASED BY THE AMOUNT, ROUNDED TO THE NEAREST 5 CENTS, THAT EQUALS THE PRODUCT OF:~~

~~1. THE STATE MINIMUM WAGE RATE IN EFFECT FOR THE IMMEDIATELY PRECEDING 12 MONTH PERIOD; AND~~

~~2. THE LESSER OF:~~

~~A. THE AVERAGE PERCENTAGE GROWTH IN THE CONSUMER PRICE INDEX FOR THE IMMEDIATELY PRECEDING 12 MONTH PERIOD, AS DETERMINED BY THE COMMISSIONER UNDER SUBPARAGRAPH (II)1 OF THIS PARAGRAPH; OR~~

~~B. 5%.~~

~~(II) BEGINNING MARCH 1, 2025, AND EACH MARCH 1 THEREAFTER, THE COMMISSIONER SHALL DETERMINE AND ANNOUNCE:~~

~~1. THE AVERAGE PERCENTAGE GROWTH, IF ANY, IN THE CONSUMER PRICE INDEX BASED ON THE IMMEDIATELY PRECEDING 12 MONTH PERIOD FOR WHICH DATA ARE AVAILABLE ON MARCH 1; AND~~

~~2. THE STATE MINIMUM WAGE RATE EFFECTIVE FOR THE 12 MONTH PERIOD BEGINNING THE FOLLOWING JULY 1.~~

~~(III) IF THE COMMISSIONER DETERMINES THAT THERE IS A DECLINE OR NO GROWTH IN THE CONSUMER PRICE INDEX, THE STATE MINIMUM~~

~~WAGE RATE SHALL REMAIN THE SAME AS THE RATE THAT WAS IN EFFECT FOR THE IMMEDIATELY PRECEDING 12 MONTH PERIOD.~~

~~[(2)] (3)~~ Subject to § 3-413.1 of this subtitle, the State minimum wage rate for a small employer is:

(i) [for the 18-month period beginning July 1, 2018, \$10.10 per hour;

(ii) for the 12-month period beginning January 1, 2020, \$11.00 per hour;

(iii) for the 12-month period beginning January 1, 2021, \$11.60 per hour;

(iv) for the 12-month period beginning January 1, 2022, \$12.20 per hour;

(v)] for the ~~[12-month]~~ **9-MONTH** period beginning January 1, 2023, \$12.80 per hour; AND

[(vi) for the 12-month period beginning January 1, 2024, \$13.40 per hour;

(vii) for the 12-month period beginning January 1, 2025, \$14.00 per hour;

(viii) for the 6-month period beginning January 1, 2026, \$14.60 per hour; and

(ix)] (II) ~~FOR THE 21-MONTH PERIOD~~ beginning [July 1, 2026] ~~OCTOBER 1, 2023~~ **JANUARY 1, 2024**, \$15.00 per hour; AND

~~(III) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2025, AND EACH SUBSEQUENT 12-MONTH PERIOD, EQUIVALENT TO THE STATE MINIMUM WAGE RATE UNDER PARAGRAPH (1)(III) OF THIS SUBSECTION.~~

(d) An employer may pay an employee a wage that equals a rate of 85% of the State minimum wage established under this section if the employee is under the age of 18 years.

~~§ 413.1.~~

~~(a) In this section, "Board" means the Board of Public Works.~~

~~(b) [(1)] Subject to subsection (d) of this section [and except as provided in paragraph (2) of this subsection], on or before [October 1, 2020] MARCH 1, 2025, and [October] MARCH 1 each year thereafter [until October 1, 2024], the Board shall determine whether the seasonally adjusted total employment from the Current Employment Statistics series as reported by the U.S. Bureau of Labor Statistics for the most recent 6 month period is negative as compared with the immediately preceding 6 month period.~~

~~[(2)] The Board is not required to make a determination under paragraph (1) of this subsection if the Board has previously temporarily suspended an increase to the minimum wage rate specified under § 3-413(e) of this subtitle.]~~

~~(e) (1) Subject to subsection (d) of this section, the Board may temporarily suspend an increase to the minimum wage rate specified under § 3-413(e) of this subtitle if the Board determined under subsection [(b)(1)] (B) of this section that the seasonally adjusted total employment is negative.~~

~~(2) If the seasonally adjusted total employment is negative, the Board may consider the performance of State revenues in the previous 6 months, as reported by the Office of the Comptroller, in determining whether to temporarily suspend an increase to the minimum wage rate specified under § 3-413(e) of this subtitle.~~

~~(d) [The Board may temporarily suspend an increase to the minimum wage rate under subsection (e)(1) of this section only one time.~~

~~(e)] If the Board temporarily suspends an increase to the minimum wage rate specified under § 3-413(e) of this subtitle:~~

~~(1) the minimum wage rate in effect for the period beginning the following [January] JULY 1 shall remain the same as the rate that was in effect for the immediately preceding 12 month period;~~

~~(2) the remaining minimum wage rates specified in § 3-413 of this subtitle shall take effect 1 year later than the date specified; AND~~

~~(3) the Board shall notify the Commissioner that the minimum wage rate increase for the period beginning the following [January] JULY 1 is suspended for 1 year[; and~~

~~(4) a rate increase under §§ 7-307, 16-201.3, and 16-201.4 of the Health General Article for the immediately following fiscal year may not go into effect].~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2023.

Approved by the Governor, April 11, 2023.