Agenda Item 5
November 28, 2017
Public Hearing

MEMORANDUM

November 22, 2017

TO: County Council

FROM: Josh Hamlin, Legislative Attorney

SUBJECT: **Public Hearing:** Bill 35-17, Finance – Payments to Service Providers

Bill 35-17, Finance – Payments to Service Providers, sponsored by Lead Sponsor Council President Berliner and Co-Sponsors Councilmembers Leventhal, Elrich, Katz, Floreen, Rice, Hucker, Council Vice-President Riemer and Councilmember Navarro, was introduced on October 31, 2017. A Health and Human Services Committee worksession is tentatively scheduled for December 4 at 9:30 a.m.

Bill 35-17 would:

- define terms related to the annual supplement to certain providers of services to persons with developmental disabilities (currently provided through the budget resolution);
- require that a payment be made to eligible providers each year, to the extent that funds are appropriated;
- require the Director of Finance, in setting the amount of the payment, to consider the State reimbursement rates to service providers and the additional operating support needed to allow each service provider to pay direct service workers, on average, 125% of the County minimum wage;
- establish eligibility standards for a provider to receive the payment, including demonstrating to the Department of Health and Human Services that it pays direct service workers at a rate specified in the Council's current operating budget resolution; and
- provide for the issuance of method (2) regulations to administer the law.

Background

For many years, Montgomery County has chosen to pay a supplement to certain providers of direct services to Developmentally Disabled individuals in recognition that the State's reimbursement rates do not take into account the higher cost of living in Montgomery County. For many years, this supplement ("DD Supplement") was distributed based on the number of clients, the severity of their disability, and services required as determined by the State. Many years, the total amount of funding was increased by a percent or by an amount that recognized the increase in the number of people being served (expansion adjustment). Starting in FY13, the HHS Committee discussed in more detail how these funds were used by organizations. While most organizations used the additional funding to increase wages, there was no requirement or reporting

on whether the funds were being used for this purpose. The HHS Committee recommended, and the Council agreed, that starting in FY15, organizations would have to report to DHHS on the use of funds. There was a phase-in period for the requirement that these funds be used to ensure worker pay would be above the State minimum.

In FY16, additional funding was added so that the DD Supplement would allow organizations to pay workers at least 25% above the minimum wage. In FY17, the Council specified that 100% of the supplement was to be used to ensure that workers received, on average, at least 125% of the Montgomery County minimum wage.

The FY18 Operating Budget includes the following provision:

> This resolution appropriates $14,729,712 to the Department of Health and Human Services to provide a supplement to organizations providing direct services to clients of residential, community supported living arrangements, day habilitation, or supportive employment provided through the Developmental Disabilities Administration. In order to receive this supplement, an organization must demonstrate to the Department that 100% of the funding is being used to increase the pay of direct service workers in recognition of the higher cost of living in Montgomery County compared to other parts of Maryland. Each organization must document to DHHS that the funds are being used for this purpose. Section G of this resolution includes entities eligible to receive this non-competitive payment. For FY18, funds are expected to allow organizations to pay direct service workers, on average, 124% of Montgomery County minimum wage.

During the Council's recent consideration of Bills to increase the County minimum wage – first Bill 12-16 and currently Bill 28-17 – these organizations raised concerns about the impact of the proposed increases on their ability to retain employees. This Bill would codify the above-described longstanding practice of providing financial assistance to these organizations. The Bill would require that determination of the amount of the assistance include consideration of the State reimbursement rates to these organizations and the additional support necessary to allow the organizations to pay direct service workers, on average, 125% of the County minimum wage.

This packet contains:	Circle #
Bill 35-17	1
Legislative Request Report	4

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Bill No. 35-17
Concerning: Finance – Payments to Service Providers
Revised: 10/20/2017 Draft No. 4
Introduced: October 31, 2017
Expires: May 1, 2019
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President Berliner
Co-Sponsors: Councilmembers Leventhal, Elrich, Katz, Floreen, Rice, Hucker, Council Vice-President Riemer and Councilmember Navarro

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AN ACT to:

(1) provide for an annual payment to certain providers of direct services to persons with developmental disabilities;
(2) require the Director of Finance to consider certain factors in setting the amount of the payment;
(3) establish eligibility standards for a provider to receive the payment; and
(4) generally amend the law governing payments to service providers.

By adding
Montgomery County Code
Chapter 20, Finance
Article XVI, Payments to Service Providers
Section 20-83

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec 1. Article XVI (Section 20-83) is added to Chapter 20 as follows:

ARTICLE XVI. Payments to Service Providers.

20-83. Payment to providers of direct services to persons with developmental disabilities.

(a) *Definitions.* In this Section:

(1) *Developmental disability* means developmental disability as defined in Section 7-101 of the Health - General Article of the Maryland Code.

(2) *Direct service worker* means an employee of a service provider that provides direct treatment or services to persons with developmental disabilities for at least 50% of their work hours.

(3) *Director* means the Director of the Department of Finance.

(4) *Service provider* means an organization providing direct residential, meaningful day (including employment and community development services) or support services to clients through the Developmental Disabilities Administration of the Maryland Department of Health.

(b) *Payment.* Each year, to the extent that funds are appropriated, the Director must make a payment to each eligible service provider in recognition of the higher cost of living in Montgomery County compared to other parts of Maryland.

(c) *Amount of payment.* In calculating the payment, the Director must consider:

(1) the State reimbursement rates to service providers; and

(2) the additional operating support needed to allow each service provider to pay direct service workers, on average, 125% of the County minimum wage.

28 (d) *Eligibility for payment.* To receive a payment under this Section, a
29 service provider must:
30 (1) demonstrate to the Department of Health and Human Services
31 that it pays direct service workers at a rate specified in the
32 Council's current operating budget resolution; and
33 (2) meet any other eligibility standards set in regulation.
34 (e) *Regulations.* The Executive may issue regulations under Method (2) to
35 implement this Section.
36 *Approved:*

37

Roger Berliner, President, County Council Date

38 *Approved:*

39

Isiah Leggett, County Executive Date

40 *This is a correct copy of Council action.*

41

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 35-17
Finance – Payments to Service Providers

DESCRIPTION: Bill 35-17 would:

- define terms related to the annual supplement to certain providers of services to persons with developmental disabilities;
- require that a payment be made to eligible providers each year, to the extent that funds are appropriated;
- require the Director of Finance, in setting the amount of the payment, to consider the State reimbursement rates to service providers and the additional operating support needed to allow each service provider to pay direct service workers, on average, 125% of the County minimum wage;
- establish eligibility standards for a provider to receive the payment, including demonstrating to the Department of Health and Human Services that it pays direct service workers at a rate specified in the Council's current operating budget resolution; and
- provide for the issuance of method (2) regulations to administer the law.

PROBLEM: Providers of services to persons with developmental disabilities are concerned that proposed increases in the minimum wage will hurt their ability to attract and retain workers.

GOALS AND OBJECTIVES: Provide County commitment to funding for certain service providers in recognition of the higher cost of living in Montgomery County.

COORDINATION: Department of Finance

FISCAL IMPACT:

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: N/A

SOURCE OF INFORMATION: Josh Hamlin, Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: None