

SENATE BILL 606

J1, O3

4lr1663

By: **Senators Robey, Kasemeyer, Manno, McFadden, ~~and Peters~~ Peters, Brinkley, Feldman, Glassman, Kelley, Kittleman, Klausmeier, Mathias, Middleton, Pugh, and Ramirez**

Introduced and read first time: January 30, 2014

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 4, 2014

CHAPTER _____

1 AN ACT concerning

2 **Developmental Disabilities Administration – Deputy Secretary –**
3 **Establishment**

4 FOR the purpose of altering the number of deputy secretaries to be appointed by the
5 Secretary of Health and Mental Hygiene with the approval of the Governor;
6 requiring the Secretary to appoint, with the approval of the Governor, the
7 Deputy Secretary for Developmental Disabilities; altering the name of a certain
8 deputy secretary; eliminating the position of Director of the Developmental
9 Disabilities Administration and establishing as the head of the Administration
10 the Deputy Secretary for Developmental Disabilities; transferring certain
11 authority and certain responsibilities of the Director to the Deputy Secretary;
12 making conforming changes; defining a certain term; repealing a certain
13 definition; requiring the publisher of the Annotated Code of Maryland, subject
14 to the approval of the Department of Legislative Services, to correct any
15 position titles throughout the Code that are rendered incorrect by this Act; and
16 generally relating to the Developmental Disabilities Administration and the
17 establishment of the position of Deputy Secretary for Developmental
18 Disabilities.

19 BY repealing and reenacting, with amendments,

20 Article – Health – General

21 Section 2–103(a)(1), 7–101(e), 7–202, 7–206(a)(1), 7–501, 7–502, 7–801,
22 7–903, 7–1003(m), 7–1005(d), 7–1007, 7–1010, and 7–1011

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.



1 Annotated Code of Maryland
2 (2009 Replacement Volume and 2013 Supplement)

3 BY repealing and reenacting, without amendments,
4 Article – Health – General
5 Section 7–101(a), 7–201, and 7–1005(b) and (c)
6 Annotated Code of Maryland
7 (2009 Replacement Volume and 2013 Supplement)

8 BY adding to
9 Article – Health – General
10 Section 7–101(e)
11 Annotated Code of Maryland
12 (2009 Replacement Volume and 2013 Supplement)

13 BY repealing
14 Article – Health – General
15 Section 7–101(f)
16 Annotated Code of Maryland
17 (2009 Replacement Volume and 2013 Supplement)

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

20 **Article – Health – General**

21 2–103.

22 (a) (1) With the approval of the Governor, the Secretary shall appoint the
23 following [four] **FIVE** deputy secretaries:

24 (i) The Deputy Secretary for Behavioral Health [and
25 Disabilities];

26 (ii) The Deputy Secretary for Health Care Financing;

27 (iii) The Deputy Secretary for Operations; [and]

28 (iv) The Deputy Secretary for Public Health Services; **AND**

29 **(v) THE DEPUTY SECRETARY FOR DEVELOPMENTAL**
30 **DISABILITIES.**

31 7–101.

32 (a) In this title the following words have the meanings indicated.

1 **(E) “DEPUTY SECRETARY” MEANS THE DEPUTY SECRETARY FOR**
2 **DEVELOPMENTAL DISABILITIES.**

3 **[(e)] (F)** “Developmental disability” means a severe chronic disability of an
4 individual that:

5 (1) Is attributable to a physical or mental impairment, other than the
6 sole diagnosis of mental illness, or to a combination of mental and physical
7 impairments;

8 (2) Is manifested before the individual attains the age of 22;

9 (3) Is likely to continue indefinitely;

10 (4) Results in an inability to live independently without external
11 support or continuing and regular assistance; and

12 (5) Reflects the need for a combination and sequence of special,
13 interdisciplinary, or generic care, treatment, or other services that are individually
14 planned and coordinated for the individual.

15 **[(f) “Director” means the Director of the Developmental Disabilities**
16 **Administration.]**

17 7–201.

18 There is a Developmental Disabilities Administration in the Department.

19 7–202.

20 (a) The head of the Administration is the **[Director, who shall be appointed**
21 **by the Secretary] DEPUTY SECRETARY.**

22 (b) The **[Director] DEPUTY SECRETARY** shall appoint the number of
23 **[deputy] directors, assistant directors, and administrative heads provided in the State**
24 **budget.**

25 7–206.

26 (a) (1) Upon notification of the death of an individual in a program or
27 facility funded or operated by the Administration, the administrative head of the
28 program or facility shall report the death:

29 (i) Immediately to the sheriff, police, or chief law enforcement
30 official in the jurisdiction in which the death occurred;

- 1 (ii) Immediately to the Secretary; and
- 2 (iii) By the close of business the next working day to:
- 3 1. The [Director] **DEPUTY SECRETARY**;
- 4 2. The health officer in the jurisdiction where the death
- 5 occurred; and
- 6 3. The designated State protection and advocacy system.
- 7 7-501.

8 (a) There are State residential centers for individuals with an intellectual

9 disability in the Developmental Disabilities Administration.

10 (b) The [Director] **DEPUTY SECRETARY** shall appoint an administrative

11 head for each State residential center.

12 7-502.

13 (a) The Secretary shall approve the admission of an individual to a State

14 residential center only if:

15 (1) The findings of the evaluation are that the individual:

16 (i) Has an intellectual disability; and

17 (ii) For adequate habilitation, needs residential services; and

18 (2) There is no less restrictive setting in which the needed services can

19 be provided and that is available to the individual or will be available to the individual

20 within a reasonable time.

21 (b) The Secretary may not approve the admission of an individual to a State

22 residential center if:

23 (1) The findings of the evaluation are that the individual:

24 (i) Does not have an intellectual disability; or

25 (ii) Has an intellectual disability but does not need residential

26 services for adequate habilitation; or

1 (2) There is a less restrictive setting in which the needed services can
2 be provided that is available to the individual or will be available to the individual
3 within a reasonable time.

4 (c) The Secretary shall provide an individual with the appropriate least
5 restrictive service consistent with the individual's welfare, safety, and plan of
6 habilitation, if the individual:

7 (1) Has an application for services that has been approved under §
8 7-404(c) of this title; or

9 (2) Is considered eligible for transfer under Subtitle 8 of this title by
10 the [Director] **DEPUTY SECRETARY** or the [Director's] **DEPUTY SECRETARY'S**
11 designee.

12 7-801.

13 (a) The [Director] **DEPUTY SECRETARY** may transfer an individual with
14 developmental disability from a public residential program or a public day program to
15 another public residential program or public day program or, if a private provider of
16 services agrees, to that private program, if the [Director] **DEPUTY SECRETARY** finds
17 that:

18 (1) The individual with developmental disability either can receive
19 better treatment in, or would be more likely to benefit from treatment at the other
20 program; or

21 (2) The safety or welfare of other individuals with developmental
22 disability would be furthered.

23 (b) The [Director] **DEPUTY SECRETARY** may transfer any individual with
24 developmental disability who is a resident of another state to a residential facility in
25 that state if the [Director] **DEPUTY SECRETARY** finds that the transfer is feasible.

26 (c) (1) Any finding that the [Director] **DEPUTY SECRETARY** makes
27 under subsection (a) or (b) of this section shall be in writing and filed with the record
28 of the individual with developmental disability.

29 (2) A copy of the finding and the notice to the private provider of
30 services or program to which the individual with developmental disability is being
31 transferred shall be sent to the proponent of admission, guardian of the person, next of
32 kin, and counsel of the individual with developmental disability.

33 (3) The [Director] **DEPUTY SECRETARY** shall give the individual
34 with developmental disability the opportunity for a hearing on the proposed transfer

1 under this section. A transfer may not take place until a decision is issued as a result
2 of the hearing.

3 (4) The Board of Review of the Department does not have jurisdiction
4 to review the determination of an administrative law judge made pursuant to a
5 hearing under this subtitle.

6 (5) The determination of the administrative law judge is a final
7 decision of the Department for the purpose of judicial review of final decisions under
8 Title 10, Subtitle 2 of the State Government Article.

9 7-903.

10 (a) In addition to any other license required by law, a person shall be
11 licensed by the Administration before the person may provide the following services to
12 an individual with developmental disability or a recipient of individual support
13 services:

14 (1) Day habilitation services;

15 (2) Residential services;

16 (3) Services coordination;

17 (4) Vocational services;

18 (5) More than 1 family support service, as defined under § 7-701 of
19 this title;

20 (6) More than 1 individual support service; and

21 (7) More than 1 community supported living arrangements service.

22 (b) (1) If a person is licensed or certified by another State agency or
23 accredited by a national accreditation agency such as the Accreditation Council for
24 Persons with Developmental Disabilities (ACDD) or the Council for Accreditation for
25 Rehabilitation Facilities (CARF) to provide services to an individual with a
26 developmental disability or a recipient of individual support services, the [Director]
27 **DEPUTY SECRETARY** may waive the requirement for a license by the
28 Administration.

29 (2) Upon a showing by the [Director] **DEPUTY SECRETARY** that the
30 licensed, certified, or accredited person is out of compliance with licensing regulations
31 adopted by the Secretary the [Director] **DEPUTY SECRETARY** may revoke the waiver.

32 7-1003.

1 (m) (1) A person who believes that the rights of an individual with
2 developmental disability have been violated shall report the alleged violation to the
3 executive director or administrative head of a licensee.

4 (2) The executive officer or administrative head of the licensee shall:

5 (i) Promptly send the report:

6 1. To the [Director] **DEPUTY SECRETARY**; and

7 2. To the State–designated protection and advocacy
8 agency;

9 (ii) Investigate the report; and

10 (iii) After the investigation, report the findings:

11 1. To the complainant;

12 2. To the State–designated protection and advocacy
13 agency; and

14 3. To the [Director] **DEPUTY SECRETARY**.

15 (3) The State–designated protection and advocacy agency shall seek
16 redress of a violation of the rights stated in this section.

17 7–1005.

18 (b) (1) In addition to any other reporting requirement of law, a person
19 who believes that an individual with developmental disability has been abused
20 promptly shall report the alleged abuse to the executive officer or administrative head
21 of the licensee.

22 (2) The executive officer or administrative head shall report the
23 alleged abuse to an appropriate law–enforcement agency.

24 (3) A report to the executive officer or administrative head:

25 (i) May be oral or written; and

26 (ii) Shall contain as much information as the reporter is able to
27 provide.

28 (c) (1) The law–enforcement agency shall:

29 (i) Investigate thoroughly each report of an alleged abuse; and

1 (ii) Attempt to ensure the protection of the alleged victim.

2 (2) The investigation shall include:

3 (i) A determination of the nature, extent, and cause of the
4 abuse;

5 (ii) The identity of the alleged abuser or abusers; and

6 (iii) Any other pertinent fact or matter.

7 (d) As soon as possible, but no later than 10 working days after the
8 completion of the investigation, the law-enforcement agency shall submit a written
9 report of its findings to the State's Attorney, the [Director] **DEPUTY SECRETARY**, the
10 State-designated protection and advocacy agency, and the executive officer or
11 administrative head of the licensee.

12 7-1007.

13 On request, the licensee shall give to the [Director] **DEPUTY SECRETARY** or a
14 designee of the [Director] **DEPUTY SECRETARY**:

15 (1) Any information that the licensee has about an individual served
16 by the licensee;

17 (2) Access to the records of the licensee;

18 (3) Access to any individual served;

19 (4) Access to the records of individuals served by the licensee; and

20 (5) Access to any part of the premises of the licensee.

21 7-1010.

22 (a) Except as otherwise expressly provided in this section, a licensee may not
23 disclose any record that the licensee keeps on an individual who has been served by
24 the licensee, unless the individual gives written, informed consent to the disclosure.

25 (b) (1) Subject to the limitations of this subsection, a licensee shall
26 disclose a record of an individual who is served by a licensee to:

27 (i) The individual with developmental disability, if:

28 1. A person is not authorized to act on behalf of the
29 individual with developmental disability; and

1 an order to permit the executive officer or administrative head of the licensee to
2 continue to refuse disclosure to the individual with developmental disability.

3 (d) A licensee shall disclose a record that is sought:

4 (1) By the staff of the licensee to carry out a purpose for which the
5 record is kept;

6 (2) By any other person who provides or coordinates services in
7 accordance with the individual's plan of habilitation;

8 (3) By the [Director] **DEPUTY SECRETARY** or a designee of the
9 [Director] **DEPUTY SECRETARY**; and

10 (4) By a person to further the purposes of:

11 (i) A medical review committee;

12 (ii) An accreditation board or commission;

13 (iii) A licensing agency that is authorized by statute to review
14 records;

15 (iv) A court order;

16 (v) A representative of the Division of Reimbursement of the
17 Department;

18 (vi) An auditor of the Department;

19 (vii) An auditor of the Office of Legislative Audits of the
20 Department of Legislative Services; or

21 (viii) The Clients' Rights Committee of the licensee unless the
22 individual with developmental disability objects.

23 (e) (1) A licensee may require a person who asks for a copy of a record to
24 pay a reasonable fee.

25 (2) The fee may not exceed the cost of copying the record.

26 (f) (1) Except for a disclosure that is made to the staff for its routine use
27 under subsection (d)(1) of this section, a licensee shall keep a list of all disclosures of a
28 record.

29 (2) The list shall state:

- 1 (i) The date, nature, and purpose of each disclosure; and
2 (ii) The name and address of each person to whom the
3 disclosure is made.

4 7-1011.

5 (a) An individual with developmental disability or person who is authorized
6 to act on behalf of the individual may:

- 7 (1) Contest a record that the licensee keeps on the individual;
8 (2) Ask for an addition to or other change in the record; and
9 (3) Contest disclosure of the record.

10 (b) Within 14 days after a licensee receives a request to change a record, the
11 licensee shall acknowledge receipt of the request.

12 (c) (1) Within 14 days after a licensee acknowledges receipt of the
13 request, the licensee shall:

- 14 (i) Make or refuse to make the requested change; and
15 (ii) Give the person who requested the change written notice of
16 the licensee's action.

17 (2) A notice of refusal shall contain:

- 18 (i) Each reason for the refusal; and
19 (ii) Any procedures that the [Director] **DEPUTY SECRETARY**
20 has set for review of the refusal.

21 (d) (1) An individual with developmental disability or person who is
22 authorized to act on behalf of the individual may ask the [Director] **DEPUTY**
23 **SECRETARY** to review the refusal.

24 (2) Within 45 days after the request for review, the [Director]
25 **DEPUTY SECRETARY** shall:

- 26 (i) Complete the review;
27 (ii) Make a final determination; and

1 (iii) Give the individual with developmental disability or person
2 who is authorized to act on behalf of the individual written notice of the final
3 determination.

4 (e) If the final determination of the [Director] **DEPUTY SECRETARY** is a
5 refusal to change a record, the written notice shall include:

6 (1) Each reason for the refusal;

7 (2) The procedure for inserting in the record a concise statement of the
8 reason that the individual with developmental disability or person who is authorized
9 to act on behalf of the individual disagrees with that refusal; and

10 (3) Information on the right to seek judicial review of the decision of
11 the [Director] **DEPUTY SECRETARY**.

12 SECTION 2. AND BE IT FURTHER ENACTED, That the publisher of the
13 Annotated Code of Maryland, subject to the approval of the Department of Legislative
14 Services, shall correct any position titles throughout the Code that are rendered
15 incorrect by this Act.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2014.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.