

SENATE BILL 606

J1, O3

4lr1663

By: **Senators Robey, Kasemeyer, Manno, McFadden, and Peters**

Introduced and read first time: January 30, 2014

Assigned to: Finance

A BILL ENTITLED

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
23 Annotated Code of Maryland
24 (2009 Replacement Volume and 2013 Supplement)

25 BY repealing and reenacting, without amendments,
26 Article – Health – General
27 Section 7–101(a), 7–201, and 7–1005(b) and (c)
28 Annotated Code of Maryland
29 (2009 Replacement Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Health – General
3 Section 7–101(e)
4 Annotated Code of Maryland
5 (2009 Replacement Volume and 2013 Supplement)

6 BY repealing
7 Article – Health – General
8 Section 7–101(f)
9 Annotated Code of Maryland
10 (2009 Replacement Volume and 2013 Supplement)

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

13 **Article – Health – General**

14 2–103.

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

17 (i) The Deputy Secretary for Behavioral Health [and
18 Disabilities];

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

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

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

22 (v) **THE DEPUTY SECRETARY FOR DEVELOPMENTAL**
23 **DISABILITIES.**

24 7–101.

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

26 (E) **“DEPUTY SECRETARY” MEANS THE DEPUTY SECRETARY FOR**
27 **DEVELOPMENTAL DISABILITIES.**

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

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

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

5 (3) Is likely to continue indefinitely;

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

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

11 [(f) "Director" means the Director of the Developmental Disabilities
12 Administration.]

13 7-201.

14 There is a Developmental Disabilities Administration in the Department.

15 7-202.

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

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

21 7-206.

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

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

27 (ii) Immediately to the Secretary; and

28 (iii) By the close of business the next working day to:

29 1. The [Director] **DEPUTY SECRETARY**;

1 2. The health officer in the jurisdiction where the death
2 occurred; and

3 3. The designated State protection and advocacy system.

4 7-501.

5 (a) There are State residential centers for individuals with an intellectual
6 disability in the Developmental Disabilities Administration.

7 (b) The [Director] **DEPUTY SECRETARY** shall appoint an administrative
8 head for each State residential center.

9 7-502.

10 (a) The Secretary shall approve the admission of an individual to a State
11 residential center only if:

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

13 (i) Has an intellectual disability; and

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

15 (2) There is no less restrictive setting in which the needed services can
16 be provided and that is available to the individual or will be available to the individual
17 within a reasonable time.

18 (b) The Secretary may not approve the admission of an individual to a State
19 residential center if:

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

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

22 (ii) Has an intellectual disability but does not need residential
23 services for adequate habilitation; or

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

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

1 (1) Has an application for services that has been approved under §
2 7-404(c) of this title; or

3 (2) Is considered eligible for transfer under Subtitle 8 of this title by
4 the [Director] **DEPUTY SECRETARY** or the [Director's] **DEPUTY SECRETARY'S**
5 designee.
6 7-801.

7 (a) The [Director] **DEPUTY SECRETARY** may transfer an individual with
8 developmental disability from a public residential program or a public day program to
9 another public residential program or public day program or, if a private provider of
10 services agrees, to that private program, if the [Director] **DEPUTY SECRETARY** finds
11 that:

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

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

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

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

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

27 (3) The [Director] **DEPUTY SECRETARY** shall give the individual
28 with developmental disability the opportunity for a hearing on the proposed transfer
29 under this section. A transfer may not take place until a decision is issued as a result
30 of the hearing.

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

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

4 7–903.

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

9 (1) Day habilitation services;

10 (2) Residential services;

11 (3) Services coordination;

12 (4) Vocational services;

13 (5) More than 1 family support service, as defined under § 7–701 of
14 this title;

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

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

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

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

27 7–1003.

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

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

32 (i) Promptly send the report:

- 1 1. To the [Director] **DEPUTY SECRETARY**; and
- 2 2. To the State–designated protection and advocacy
- 3 agency;
- 4 (ii) Investigate the report; and
- 5 (iii) After the investigation, report the findings:
- 6 1. To the complainant;
- 7 2. To the State–designated protection and advocacy
- 8 agency; and
- 9 3. To the [Director] **DEPUTY SECRETARY**.

10 (3) The State–designated protection and advocacy agency shall seek

11 redress of a violation of the rights stated in this section.

12 7–1005.

13 (b) (1) In addition to any other reporting requirement of law, a person

14 who believes that an individual with developmental disability has been abused

15 promptly shall report the alleged abuse to the executive officer or administrative head

16 of the licensee.

17 (2) The executive officer or administrative head shall report the

18 alleged abuse to an appropriate law–enforcement agency.

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

20 (i) May be oral or written; and

21 (ii) Shall contain as much information as the reporter is able to

22 provide.

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

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

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

26 (2) The investigation shall include:

27 (i) A determination of the nature, extent, and cause of the

28 abuse;

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

2 (iii) Any other pertinent fact or matter.

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

8 7-1007.

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

11 (1) Any information that the licensee has about an individual served
12 by the licensee;

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

14 (3) Access to any individual served;

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

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

17 7-1010.

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

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

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

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

26 2. The executive officer or administrative head of the
27 licensee determines that disclosure would not be detrimental to the individual with
28 developmental disability;

29 (ii) A parent or guardian of the person with developmental
30 disability who is:

- 1 1. A minor; or
- 2 2. Unless the individual with developmental disability
3 asks that disclosure to the parent or guardian not be allowed, an adult;
- 4 (iii) A lawyer or other individual who is authorized:
- 5 1. By the individual with developmental disability; or
- 6 2. By another individual to whom, on behalf of the
7 individual with developmental disability, disclosure of the record is authorized; or
- 8 (iv) To the executive director or a designee of the executive
9 director of the State–designated protection and advocacy agency, if:
- 10 1. The agency has received a request for an
11 investigation; and
- 12 2. There is no other person to whom, on behalf of the
13 individual with developmental disability, the record may be disclosed under this
14 paragraph; or
- 15 3. The individual with developmental disability is
16 unable to give written informed consent and the [Director] **DEPUTY SECRETARY**
17 determines that disclosure is necessary to protect the rights of the individual with
18 developmental disability.
- 19 (2) A licensee shall comply within 14 days after an individual with
20 developmental disability or a person who is authorized to act on behalf of that
21 individual, asks in writing:
- 22 (i) To receive a copy of a record; or
- 23 (ii) To see and copy the record disclosed.
- 24 (c) If a licensee refuses to disclose a record under subsection (b)(1)(i) of this
25 section, the executive officer or administrative head of a licensee shall apply, within 10
26 working days after the refusal, to the circuit court for the county where the individual
27 making the request resides or where the site of services to the individual occurred for
28 an order to permit the executive officer or administrative head of the licensee to
29 continue to refuse disclosure to the individual with developmental disability.
- 30 (d) A licensee shall disclose a record that is sought:
- 31 (1) By the staff of the licensee to carry out a purpose for which the
32 record is kept;

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

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

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

6 (i) A medical review committee;

7 (ii) An accreditation board or commission;

8 (iii) A licensing agency that is authorized by statute to review
9 records;

10 (iv) A court order;

11 (v) A representative of the Division of Reimbursement of the
12 Department;

13 (vi) An auditor of the Department;

14 (vii) An auditor of the Office of Legislative Audits of the
15 Department of Legislative Services; or

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

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

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

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

24 (2) The list shall state:

25 (i) The date, nature, and purpose of each disclosure; and

26 (ii) The name and address of each person to whom the
27 disclosure is made.

28 7-1011.

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

3 (1) Contest a record that the licensee keeps on the individual;

4 (2) Ask for an addition to or other change in the record; and

5 (3) Contest disclosure of the record.

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

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

10 (i) Make or refuse to make the requested change; and

11 (ii) Give the person who requested the change written notice of
12 the licensee's action.

13 (2) A notice of refusal shall contain:

14 (i) Each reason for the refusal; and

15 (ii) Any procedures that the [Director] **DEPUTY SECRETARY**
16 has set for review of the refusal.

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

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

22 (i) Complete the review;

23 (ii) Make a final determination; and

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

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

29 (1) Each reason for the refusal;

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

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

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

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