

HOUSE BILL 1172

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By: **Chair, Health and Government Operations Committee (By Request –
Departmental – Health and Mental Hygiene)**

Introduced and read first time: February 23, 2015

Assigned to: Rules and Executive Nominations

Re-referred to: Health and Government Operations, February 26, 2015

Committee Report: Favorable with amendments

House action: Adopted

Read second time: April 1, 2015

CHAPTER _____

1 AN ACT concerning

2 **Individuals With Developmental Disabilities – Providers – Licenses**

3 FOR the purpose of requiring a person to be licensed by the Department of Health and
4 Mental Hygiene before the person may provide services to an individual with a
5 developmental disability or a recipient of individual support services; repealing the
6 authority of the Developmental Disabilities Administration to license certain
7 persons to provide certain services; requiring the Department to adopt certain
8 regulations; altering the circumstances under which the Deputy Secretary for
9 Developmental Disabilities may waive the requirement for a certain license;
10 requiring the Department to make a certain approval of the composition of a
11 governing body; ~~requiring the Secretary of Health and Mental Hygiene to adopt~~
12 ~~certain rules and regulations~~; requiring an applicant for a certain license to submit
13 a certain application to the Department in a certain manner; requiring an applicant
14 to meet certain requirements to be issued a certain license; requiring the
15 Department to conduct a certain investigation; authorizing the Department to deny
16 a certain license under certain circumstances; altering a certain definition; requiring
17 the Department to conduct certain inspections and to evaluate the performance of
18 certain surveyors; requiring the Department to define certain criteria; repealing the
19 authority of the Administration and the Office of Health Care Quality to adopt
20 certain regulations; making conforming changes; authorizing the Department to
21 impose certain sanctions; prohibiting a certain civil money penalty from exceeding a
22 certain amount; requiring the Department to consider certain factors in establishing
23 the amount of a certain civil money penalty; requiring the Department to offer a

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 licensee an opportunity for a certain resolution under certain circumstances;
 2 requiring the Department to provide certain notice and an opportunity for a hearing
 3 under certain circumstances; requiring the Department to have the burden of proof
 4 with respect to the imposition of a certain penalty; repealing the authority of the
 5 Administration to impose a certain sanction; making a certain technical correction;
 6 providing for the effective date of this Act; and generally relating to the licensing of
 7 providers of services to an individual with a developmental disability or a recipient
 8 of individual support services by the Department of Health and Mental Hygiene.

9 BY repealing and reenacting, with amendments,
 10 Article – Health – General
 11 Section 7–903 through 7–907, 7–909, and 7–910
 12 Annotated Code of Maryland
 13 (2009 Replacement Volume and 2014 Supplement)

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

16 **Article – Health – General**

17 7–903.

18 (a) **(1)** In addition to any other license required by law, a person shall be
 19 licensed by the [Administration] **DEPARTMENT** before the person may provide [the
 20 following] services to an individual with developmental disability or a recipient of
 21 individual support services[:

22 (1) Day habilitation services;

23 (2) Residential services;

24 (3) Services coordination;

25 (4) Vocational services;

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

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

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

30 **(2) THE DEPARTMENT SHALL ADOPT REGULATIONS PROVIDING FOR**
 31 **THE SERVICES REQUIRING LICENSURE UNDER PARAGRAPH (1) OF THIS**
 32 **SUBSECTION.**

1 (b) (1) If a person is licensed or certified by another State agency or accredited
2 by [a national accreditation agency such as the Accreditation Council for Persons with
3 Developmental Disabilities (ACDD) or the Council for Accreditation for Rehabilitation
4 Facilities (CARF)] **AN ORGANIZATION APPROVED BY THE SECRETARY IN**
5 **ACCORDANCE WITH § 19-2302 OF THIS ARTICLE** to provide services to an individual
6 with a developmental disability or a recipient of individual support services, the Deputy
7 Secretary may waive the requirement for a license by the [Administration] **DEPARTMENT**.

8 (2) Upon a showing by the Deputy Secretary that the licensed, certified, or
9 accredited person is out of compliance with licensing regulations adopted by the Secretary
10 the Deputy Secretary may revoke the waiver.

11 7-904.

12 (a) The Secretary shall adopt rules and regulations for the licensing of services
13 for an individual with developmental disability or a recipient of individual support services.

14 (b) The rules and regulations shall ensure that services to an individual with
15 developmental disability or a recipient of individual support services are provided in
16 accordance with the policy stated in Subtitle 1 of this title.

17 (c) (1) The rules and regulations shall require that:

18 (i) At least 75% of the governing body of a licensee shall be residents
19 of the State or reside within a 100-mile radius of the administrative offices of the licensee,
20 which shall be located in the State; and

21 (ii) No employee of a licensee or immediate family member of an
22 employee of a licensee may serve as a voting member of the governing body of a licensee
23 unless:

24 1. The employee receives services from the licensee; or

25 2. The [Administration] **DEPARTMENT** explicitly approves
26 the composition of the governing body through an innovative program service plan in
27 accordance with COMAR 10.22.02.09.F.

28 (2) The requirements of paragraph (1)(i) of this subsection may be waived
29 if a community-based advisory board or committee is established by the licensee and
30 approved by the Department.

31 (d) The rules and regulations shall ~~f~~also require that an applicant for a license
32 under this section shall demonstrate to the Department the applicant's capability to
33 provide for or arrange for the provision of all applicable services required by this ~~chapter~~
34 **TITLE** by submitting, at a minimum, the following documents to the Department:

1 (1) A business plan that clearly demonstrates the ability of the applicant
2 to provide services in accordance with Maryland regulations and funding requirements;

3 (2) A summary of the applicant's demonstrated experience in the field of
4 developmental disabilities, in accordance with standards developed by the Department;

5 (3) Prior licensing reports issued within the previous 10 years from any
6 in-State or out-of-state entities associated with the applicant, including deficiency reports
7 and compliance records on which the State may make reasoned decisions about the
8 qualifications of the applicant; and

9 (4) A written quality assurance plan, approved by the Developmental
10 Disabilities Administration, to address how the applicant will ensure the health and safety
11 of the individuals served by the applicant and the quality of services provided to individuals
12 by the applicant;

13 ~~(1) REQUIRE AN APPLICANT FOR A LICENSE UNDER THIS SECTION TO~~
14 ~~SUBMIT ALL DOCUMENTS SPECIFIED IN THE RULES AND REGULATIONS TO~~
15 ~~DETERMINE THE CAPABILITY OF THE APPLICANT TO PROVIDE FOR OR ARRANGE~~
16 ~~FOR THE PROVISION OF ALL APPLICABLE SERVICES REQUIRED BY THIS TITLE; AND~~

17 ~~(2) PROVIDE FOR THE LICENSING OF PROGRAMS AND LICENSE~~
18 ~~RENEWAL.~~

19 7-905.

20 (a) An applicant for a license shall submit an application to the [Administration]
21 DEPARTMENT on the form that the [Administration] DEPARTMENT requires.

22 (b) The application shall provide the information that the [Administration]
23 DEPARTMENT requires.

24 7-906.

25 When an application for a license is filed, the [Administration] DEPARTMENT
26 promptly shall investigate the applicant.

27 7-907.

28 (a) [The Administration shall issue a license to any applicant who meets the
29 requirements of this subtitle and the rules and regulations adopted under § 7-904 of this
30 subtitle, except as provided in paragraph (b) of this section.] AN APPLICANT FOR A
31 LICENSE SHALL MEET ALL REQUIREMENTS IN RULES AND REGULATIONS ADOPTED
32 UNDER § 7-904 OF THIS SUBTITLE TO BE ISSUED A LICENSE.

33 (b) The [Administration] DEPARTMENT may deny a license:

1 (1) To any entity that has had a license revoked by the Department within
2 the previous 10 years; or

3 (2) To any entity that has a corporate officer who has served as a corporate
4 officer for an entity that has had a license revoked by the Department within the previous
5 10 years.

6 7–909.

7 (a) In this section, the word “licensee” means a person who is licensed by the
8 [Administration] **DEPARTMENT** under this title to provide services.

9 (b) (1) The [Administration or its agent] **DEPARTMENT** shall inspect each
10 ~~site or office operated by a~~ licensee at least once annually and at any other time that the
11 [Administration] **DEPARTMENT** considers necessary.

12 (2) The [Administration or its agent] **DEPARTMENT** shall evaluate
13 periodically the performance of surveyors who carry out inspections under this subsection
14 to ensure the consistent and uniform interpretation and application of licensing
15 requirements.

16 (c) The [Administration] **DEPARTMENT** shall keep a report of each inspection.

17 (d) The [Administration] **DEPARTMENT** shall bring any deficiencies to the
18 attention of:

19 (1) The executive officer of the licensee; or

20 (2) In the case of an intermediate care facility–intellectual disability, the
21 State Planning Council and the State–designated protection and advocacy agency.

22 (e) (1) The [Administration, in conjunction with the Office of Health Care
23 Quality,] **DEPARTMENT** shall adopt regulations that establish a system of prioritization
24 to respond to and investigate serious reportable incidents, as defined by the
25 [Administration] **DEPARTMENT**, in the areas of abuse, neglect, serious injury, and
26 medication errors that threaten the health, safety, and well–being of individuals receiving
27 services funded by the [Administration] **DEPARTMENT** in State–operated and IN
28 community programs licensed by the [Administration] **DEPARTMENT**.

29 (2) The [Administration] **DEPARTMENT** shall seek input from individuals
30 with disabilities and their families, licensees, and advocacy organizations in developing the
31 regulations, prior to publishing the regulations in the Maryland Register for public
32 comment.

33 (3) The regulations shall define and address:

1 (i) The procedures and timelines that providers must follow when
2 reporting serious reportable incidents and deaths to the [Administration and the Office of
3 Health Care Quality] DEPARTMENT;

4 (ii) The Department's protocol to determine the necessity to
5 investigate a serious reportable incident that takes into account:

6 1. The severity of the incident;

7 2. The quality of the licensee's internal investigation; and

8 3. The number and frequency of serious reportable incidents
9 reported by the licensee to the Department;

10 (iii) The specific roles and responsibilities of each governmental unit
11 involved in any follow-up investigations that may occur due to a licensee's report of a
12 serious reportable incident or death;

13 (iv) Methods of investigations, including on-site investigations;

14 (v) Time lines for response to serious reportable incidents and
15 deaths and investigation of serious reportable incidents and deaths;

16 (vi) Time lines for issuing specified reports, including corrective
17 action plans, to the [Administration] DEPARTMENT, licensee, Mortality and Quality
18 Review Committee, Medicaid Fraud Unit, individuals receiving services from the licensee
19 involved in the incident and their guardians or family members, and others; and

20 (vii) Follow-up protocols for the [Office of Health Care Quality and
21 the Administration] DEPARTMENT to ensure that corrective action has been implemented
22 by the licensee.

23 7-910.

24 (a) The [Administration] DEPARTMENT shall deny a license to any applicant or
25 suspend or revoke a license if the applicant or licensee fails to comply with the applicable
26 laws, rules, or regulations of this State.

27 **(B) (1) THE ~~SECRETARY~~ DEPARTMENT MAY IMPOSE SANCTIONS,**
28 **INCLUDING A CIVIL MONEY PENALTY, FOR FAILURE BY A LICENSEE TO**
29 **SUBSTANTIALLY COMPLY WITH ANY APPLICABLE STATE LAWS, REGULATIONS, OR**
30 **RULES.**

1 (2) ~~THE SECRETARY DEPARTMENT MAY~~ SHALL ADOPT RULES AND
2 REGULATIONS PROVIDING FOR THE SANCTIONS TO BE IMPOSED UNDER PARAGRAPH
3 (1) OF THIS SUBSECTION.

4 (3) A CIVIL MONEY PENALTY IMPOSED UNDER THIS SUBSECTION MAY
5 NOT EXCEED \$5,000.

6 (4) IN ESTABLISHING THE AMOUNT OF A CIVIL MONEY PENALTY
7 IMPOSED UNDER THIS SUBSECTION, THE DEPARTMENT SHALL CONSIDER, UNDER
8 GUIDELINES ESTABLISHED IN THE REGULATIONS ADOPTED UNDER PARAGRAPH (2)
9 OF THIS SUBSECTION:

10 (I) THE NUMBER, NATURE, AND SERIOUSNESS OF THE
11 VIOLATIONS;

12 (II) THE DEGREE OF RISK CAUSED BY THE VIOLATIONS TO THE
13 HEALTH, LIFE, OR SAFETY OF THE INDIVIDUAL SERVED BY THE LICENSEE;

14 (III) THE EFFORTS MADE BY THE LICENSEE TO CORRECT THE
15 VIOLATIONS;

16 (IV) ANY HISTORY OF SIMILAR VIOLATIONS;

17 (V) WHETHER THE AMOUNT OF THE PROPOSED CIVIL MONEY
18 PENALTY WILL JEOPARDIZE THE FINANCIAL ABILITY OF THE LICENSEE TO
19 CONTINUE SERVING INDIVIDUALS; AND

20 (VI) ANY OTHER REASONABLE FACTORS AS DETERMINED BY
21 THE DEPARTMENT.

22 (5) IF A CIVIL MONEY PENALTY IS PROPOSED, THE DEPARTMENT
23 SHALL OFFER THE LICENSEE AN OPPORTUNITY FOR INFORMAL DISPUTE
24 RESOLUTION.

25 (6) IF, FOLLOWING THE OPPORTUNITY FOR INFORMAL DISPUTE
26 RESOLUTION, A CIVIL MONEY PENALTY IS IMPOSED, THE DEPARTMENT SHALL
27 PROVIDE:

28 (I) WRITTEN NOTICE OF:

29 1. THE BASIS ON WHICH THE ORDER IS MADE;

30 2. THE DEFICIENCY ON WHICH THE ORDER IS BASED;

1 **3. THE AMOUNT OF THE CIVIL MONEY PENALTY TO BE**
2 **IMPOSED; AND**

3 **4. THE MANNER IN WHICH THE AMOUNT OF THE CIVIL**
4 **MONEY PENALTY WAS CALCULATED; AND**

5 **(II) AN OPPORTUNITY FOR A HEARING AS PROVIDED UNDER**
6 **SUBSECTION (E) OF THIS SECTION.**

7 **(7) THE DEPARTMENT SHALL HAVE THE BURDEN OF PROOF WITH**
8 **RESPECT TO THE IMPOSITION OF A CIVIL MONEY PENALTY UNDER THIS**
9 **SUBSECTION.**

10 **(b) (C)** Any applicant or licensee who knowingly and willfully makes a false
11 statement in connection with an application under this subtitle shall be guilty of a
12 misdemeanor and upon conviction shall be subject to a fine not to exceed \$1,000, or
13 imprisonment not exceeding 1 year, or both.

14 ~~**(e) (D)**~~ The ~~Administration~~ **DEPARTMENT** may impose a penalty not
15 exceeding \$500 per day per violation for each day a violation occurs on a licensee that fails
16 to comply with the reporting requirements established under § 7–306.1 (l) of this title. ~~‡~~

17 ~~**(d) (E)**~~ Except as otherwise provided in § 10–226 of the State Government
18 Article, before the [Administration] **DEPARTMENT** takes any action **AGAINST AN**
19 **APPLICANT OR A LICENSEE** under this section, the [Administration] **DEPARTMENT** shall
20 give the applicant or licensee notice and an opportunity for a hearing.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 September 1, 2015.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.