

Chapter 539

(Senate Bill 606)

AN ACT concerning

Developmental Disabilities Administration – Deputy Secretary – Establishment

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

BY repealing and reenacting, with amendments,

Article – Health – General

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

Annotated Code of Maryland

(2009 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, without amendments,

Article – Health – General

Section 7–101(a), 7–201, and 7–1005(b) and (c)

Annotated Code of Maryland

(2009 Replacement Volume and 2013 Supplement)

BY adding to

Article – Health – General

Section 7–101(e)

Annotated Code of Maryland

(2009 Replacement Volume and 2013 Supplement)

BY repealing

Article – Health – General
Section 7–101(f)
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

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

Article – Health – General

2–103.

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

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

(ii) The Deputy Secretary for Health Care Financing;

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

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

(v) THE DEPUTY SECRETARY FOR DEVELOPMENTAL DISABILITIES.

7–101.

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

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

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

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

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

(3) Is likely to continue indefinitely;

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

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

[f] “Director” means the Director of the Developmental Disabilities Administration.]

7–201.

There is a Developmental Disabilities Administration in the Department.

7–202.

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

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

7–206.

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

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

(ii) Immediately to the Secretary; and

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

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

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

3. The designated State protection and advocacy system.

7–501.

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

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

7-502.

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

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

(i) Has an intellectual disability; and

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

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

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

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

(i) Does not have an intellectual disability; or

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

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

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

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

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

7-801.

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

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

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

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

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

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

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

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

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

7-903.

(a) In addition to any other license required by law, a person shall be licensed by the Administration before the person may provide the following services to

an individual with developmental disability or a recipient of individual support services:

- (1) Day habilitation services;
 - (2) Residential services;
 - (3) Services coordination;
 - (4) Vocational services;
 - (5) More than 1 family support service, as defined under § 7-701 of this title;
 - (6) More than 1 individual support service; and
 - (7) More than 1 community supported living arrangements service.
- (b) (1) If a person is licensed or certified by another State agency or accredited by a national accreditation agency such as the Accreditation Council for Persons with Developmental Disabilities (ACDD) or the Council for Accreditation for Rehabilitation Facilities (CARF) to provide services to an individual with a developmental disability or a recipient of individual support services, the [Director] **DEPUTY SECRETARY** may waive the requirement for a license by the Administration.
- (2) Upon a showing by the [Director] **DEPUTY SECRETARY** that the licensed, certified, or accredited person is out of compliance with licensing regulations adopted by the Secretary the [Director] **DEPUTY SECRETARY** may revoke the waiver.

7-1003.

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

- (2) The executive officer or administrative head of the licensee shall:
- (i) Promptly send the report:
 1. To the [Director] **DEPUTY SECRETARY**; and
 2. To the State-designated protection and advocacy agency;
 - (ii) Investigate the report; and

- (iii) After the investigation, report the findings:
1. To the complainant;
 2. To the State-designated protection and advocacy agency; and
 3. To the [Director] **DEPUTY SECRETARY**.

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

7-1005.

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

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

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

- (i) May be oral or written; and
- (ii) Shall contain as much information as the reporter is able to provide.

(c) (1) The law-enforcement agency shall:

- (i) Investigate thoroughly each report of an alleged abuse; and
- (ii) Attempt to ensure the protection of the alleged victim.

(2) The investigation shall include:

- (i) A determination of the nature, extent, and cause of the abuse;
- (ii) The identity of the alleged abuser or abusers; and
- (iii) Any other pertinent fact or matter.

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

7-1007.

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

- (1) Any information that the licensee has about an individual served by the licensee;
- (2) Access to the records of the licensee;
- (3) Access to any individual served;
- (4) Access to the records of individuals served by the licensee; and
- (5) Access to any part of the premises of the licensee.

7-1010.

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

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

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

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

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

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

1. A minor; or

2. Unless the individual with developmental disability asks that disclosure to the parent or guardian not be allowed, an adult;

(iii) A lawyer or other individual who is authorized:

1. By the individual with developmental disability; or

2. By another individual to whom, on behalf of the individual with developmental disability, disclosure of the record is authorized; or

(iv) To the executive director or a designee of the executive director of the State-designated protection and advocacy agency, if:

1. The agency has received a request for an investigation; and

2. There is no other person to whom, on behalf of the individual with developmental disability, the record may be disclosed under this paragraph; or

3. The individual with developmental disability is unable to give written informed consent and the [Director] **DEPUTY SECRETARY** determines that disclosure is necessary to protect the rights of the individual with developmental disability.

(2) A licensee shall comply within 14 days after an individual with developmental disability or a person who is authorized to act on behalf of that individual, asks in writing:

(i) To receive a copy of a record; or

(ii) To see and copy the record disclosed.

(c) If a licensee refuses to disclose a record under subsection (b)(1)(i) of this section, the executive officer or administrative head of a licensee shall apply, within 10 working days after the refusal, to the circuit court for the county where the individual making the request resides or where the site of services to the individual occurred for an order to permit the executive officer or administrative head of the licensee to continue to refuse disclosure to the individual with developmental disability.

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

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

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

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

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

(i) A medical review committee;

(ii) An accreditation board or commission;

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

(iv) A court order;

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

(vi) An auditor of the Department;

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

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

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

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

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

(2) The list shall state:

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

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

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

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

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

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

- (i) Make or refuse to make the requested change; and
 - (ii) Give the person who requested the change written notice of the licensee's action.
- (2) A notice of refusal shall contain:
- (i) Each reason for the refusal; and
 - (ii) Any procedures that the [Director] **DEPUTY SECRETARY** has set for review of the refusal.

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

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

- (i) Complete the review;
- (ii) Make a final determination; and
- (iii) Give the individual with developmental disability or person who is authorized to act on behalf of the individual written notice of the final determination.

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

- (1) Each reason for the refusal;

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

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

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

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

Approved by the Governor, May 15, 2014.