

HOUSE BILL 900

J1

0lr2739
CF SB 465

By: **Delegates Montgomery, Benson, Bobo, Bohanan, Bronrott, Carr, Costa, Gaines, Guzzone, Heller, Hubbard, Kaiser, Kullen, Love, Manno, Mizeur, Niemann, Pena-Melnyk, Robinson, and Waldstreicher**

Introduced and read first time: February 10, 2010

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 24, 2010

CHAPTER _____

1 AN ACT concerning

2 **Developmental Disabilities Administration – Recipient ~~Reevaluations~~**
3 **Appeals**

4 FOR the purpose of ~~requiring a recipient of certain services from the Developmental~~
5 ~~Disabilities Administration to be reevaluated under certain circumstances to~~
6 ~~determine the needs of and funding levels required by the recipient~~ requiring
7 the Secretary of Health and Mental Hygiene to provide notice and an
8 opportunity for a Medicaid fair hearing under certain circumstances; requiring
9 the Secretary to provide certain notice within a certain time period to a
10 recipient of services under certain circumstances; authorizing certain
11 individuals to request the reevaluation; authorizing a recipient who has been
12 denied a reevaluation to request a hearing in accordance with a certain
13 provision of law appeal a certain decision; and generally relating to
14 reevaluations of appeals by recipients of services from the Developmental
15 Disabilities Administration.

16 BY ~~adding to~~ repealing and reenacting, with amendments,

17 Article – Health – General
18 Section ~~7-404.1~~ 7-406 and 7-1006
19 Annotated Code of Maryland
20 (2009 Replacement Volume)

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

3 Article – Health – General

4 ~~7-404.1.~~

5 ~~(A) ON REQUEST, A RECIPIENT OF SERVICES UNDER THIS TITLE SHALL~~
6 ~~BE REEVALUATED TO DETERMINE THE NEEDS OF AND FUNDING LEVELS~~
7 ~~REQUIRED BY THE RECIPIENT IF:~~

8 ~~(1) A CHANGE HAS OCCURRED IN:~~

9 ~~(i) THE PHYSICAL OR MENTAL HEALTH STATUS OF THE~~
10 ~~RECIPIENT; OR~~

11 ~~(ii) THE SUPPORT SERVICES NEEDED BY THE RECIPIENT;~~
12 ~~AND~~

13 ~~(2) THE CHANGE IS NOT EXPECTED TO BE RESOLVED OR~~
14 ~~STABILIZED WITHOUT A MODIFICATION IN THE LEVEL OF SUPPORT SERVICES.~~

15 ~~(B) A REEVALUATION MAY BE REQUESTED BY:~~

16 ~~(1) THE RECIPIENT;~~

17 ~~(2) A PARENT, ADULT SIBLING, ADULT CHILD, OR OTHER FAMILY~~
18 ~~MEMBER OF THE RECIPIENT WITH KNOWLEDGE OF THE RECIPIENT'S NEEDS~~
19 ~~AND SERVICES;~~

20 ~~(3) THE GUARDIAN OF THE RECIPIENT;~~

21 ~~(4) THE SURROGATE DECISION MAKER OF THE RECIPIENT; OR~~

22 ~~(5) A SERVICE COORDINATOR.~~

23 ~~(C) IF A RECIPIENT IS DENIED A REEVALUATION UNDER THIS SECTION,~~
24 ~~THE RECIPIENT MAY REQUEST A HEARING IN ACCORDANCE WITH § 7-406 OF~~
25 ~~THIS SUBTITLE.~~

26 7-406.

27 (a) IF A RECIPIENT OF MEDICAID-WAIVER SERVICES IS DENIED
28 SERVICES TO BE PROVIDED IN ACCORDANCE WITH A PLAN OF HABILITATION
29 UNDER § 7-1006 OF THIS TITLE, THE SECRETARY SHALL PROVIDE THE

1 INDIVIDUAL WITH NOTICE AND AN OPPORTUNITY FOR A MEDICAID FAIR
2 HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE
3 GOVERNMENT ARTICLE AND FEDERAL MEDICAID LAW.

4 (B) (1) [An] SUBJECT TO SUBSECTION (A) OF THIS SECTION, applicant
5 for services or a recipient of services under this title may:

6 [(1)] (I) Request an informal hearing before the Secretary's designee
7 on any action or inaction of the Secretary made under this title; and

8 [(2)] (II) Request the Secretary to review the decision of the informal
9 hearing.

10 [(b)] (2) After the Secretary receives a request for a review, the Secretary
11 shall conduct the review in accordance with Title 10, Subtitle 2 of the State
12 Government Article.

13 7-1006.

14 (a) In this section, "resource coordinator" means an independent professional
15 staff person responsible for assisting in the development and review of an individual
16 plan of habilitation designed to meet the individual's needs, preferences, desires,
17 goals, and outcomes in the most integrated setting.

18 (b) (1) The professional and supportive staff of a licensee who provides
19 residential or day habilitation services shall make a written plan of habilitation for
20 each individual with developmental disability who has been accepted for service by the
21 licensee. The plan shall meet applicable federal standards.

22 (2) At least once a year, the staff shall reevaluate the effectiveness and
23 adequacy of each plan in consultation with the individual with developmental
24 disability and any person authorized to act on behalf of the individual, and shall revise
25 the plan as needed.

26 (3) (i) The reevaluation required by paragraph (2) of this
27 subsection shall include a determination of whether the needs of the individual could
28 be met in more integrated settings.

29 (ii) At the time of the reevaluation, each individual with a
30 developmental disability shall be provided a range of the most integrated setting
31 service options that may be appropriate.

32 (iii) The information provided under subparagraph (ii) of this
33 paragraph shall be given in a manner approved by the Administration.

1 (4) At least once a year, the Administration shall review the licensee's
2 execution of the plan of habilitation, and compliance with the rules, regulations, and
3 standards which the Secretary adopts.

4 (c) (1) (i) The written plan of habilitation for individuals in State
5 residential centers under this section is subject to the requirements described in this
6 subsection.

7 (ii) The written plan of habilitation shall be developed by the
8 individual, a treating professional, and a resource coordinator who is not employed by
9 or under contract with the State residential center.

10 (iii) The Developmental Disabilities Administration shall
11 develop the planning protocol and format for the written plan of habilitation to be used
12 by each State residential center.

13 (iv) On an annual basis and any other time requested by the
14 individual, the treating professional and resource coordinator shall discuss with the
15 individual the service needs of the individual, including identifying community-based
16 Medicaid waiver services defined in § 15-132 of this article, and any other services
17 that may be appropriate.

18 (v) The treating professional and resource coordinator shall use
19 communication devices and techniques, including the use of sign language, as
20 appropriate, to facilitate the involvement of the individual in the development of the
21 written plan of habilitation.

22 (vi) Subsequent to the initial written plan of habilitation for
23 individuals in State residential centers, the written plan of habilitation shall include
24 an annual update on the status and progress toward addressing and resolving the
25 barriers identified in subparagraph (vii)4 of this subsection.

26 (vii) The written plan of habilitation for individuals in State
27 residential centers shall include:

28 1. The treating professional's recommendation on the
29 most integrated setting appropriate to meet the individual's needs;

30 2. The resource coordinator's recommendation on the
31 most integrated setting appropriate to meet the individual's needs;

32 3. A description of the services and supports, including
33 residential, day, employment, and technology, that are required for the individual to
34 receive services in the most integrated setting appropriate to meet the individual's
35 needs; and

1 4. A listing of barriers that prevent an individual from
2 receiving the supports and services required for the individual to live in the most
3 integrated setting appropriate to meet the individual's needs, including community
4 capacity or systems, if community services are determined to be the most integrated
5 setting appropriate to meet the individual's needs.

6 (2) The treating professional and resource coordinator shall identify
7 and report any rights violations as provided in §§ 7-1002(b) and 7-1003(m) of this
8 subtitle.

9 (3) On or before December 1 of each year, each State residential center
10 shall provide the information required under paragraph (1)(vi) and (vii) of this
11 subsection to the Developmental Disabilities Administration and to the Department of
12 Disabilities.

13 (4) (i) On or before July 1 of each year, the Developmental
14 Disabilities Administration and the Department of Disabilities shall report to the
15 General Assembly, in accordance with § 2-1246 of the State Government Article,
16 summarizing the statewide and regional information provided by the State residential
17 centers in paragraph (3) of this subsection.

18 (ii) The data shall be incorporated in the State's Olmstead Plan,
19 with recommendations to address the barriers that prevent individuals from living in
20 the most integrated setting appropriate to meet the individual's needs.

21 (d) Each individual plan of habilitation shall be reviewed and approved,
22 disapproved, or modified by:

23 (1) The executive officer or administrative head of the licensee or a
24 qualified developmental disability professional, as defined in § 7-1002(a) of this
25 subtitle, whom the executive officer or administrative head designates; and

26 (2) One other professional individual who is responsible for carrying
27 out a major program but does not participate in the individual plan of habilitation.

28 (e) Approval of a plan of habilitation shall be based on the current needs of
29 the individual with developmental disability.

30 (f) **(1) IF THE SECRETARY DENIES MEDICAID-WAIVER SERVICES**
31 **THAT ARE TO BE PROVIDED TO A RECIPIENT UNDER A PLAN OF HABILITATION,**
32 **THE SECRETARY SHALL, WITHIN 30 DAYS AFTER THE DENIAL, PROVIDE TO THE**
33 **RECIPIENT WRITTEN NOTICE THAT INCLUDES:**

34 **(I) THE REASON FOR THE DENIAL, INCLUDING A COPY OF**
35 **ANY ADMINISTRATION EVALUATION OF THE RECIPIENT THAT RELATES TO THE**
36 **DECISION OF THE SECRETARY; AND**

1 (II) INSTRUCTIONS FOR THE RECIPIENT TO APPEAL THE
2 DECISION UNDER § 7-406 OF THIS TITLE.

3 (2) AN INDIVIDUAL WHO RECEIVES WRITTEN NOTICE OF A
4 DENIAL OF MEDICAID-WAIVER SERVICES UNDER PARAGRAPH (1) OF THIS
5 SUBSECTION MAY APPEAL THE DECISION UNDER § 7-406 OF THIS TITLE.

6 (G) The Secretary shall:

7 (1) Adopt rules and regulations to carry out the intent of this section;

8 (2) Provide appropriate support and technical assistance to the
9 licensee in developing a plan of habilitation required by this section; and

10 (3) With respect to State residential centers, provide the professional
11 and supportive staff and equipment that are necessary to carry out the plans of
12 habilitation required by this section.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2010.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.