

# SENATE BILL 465

J1

(0lr1951)

## ENROLLED BILL

— Finance/Health and Government Operations —

Introduced by **Senators Lenett, Kelley, Madaleno, Middleton, and Zirkin**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

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Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
President.

### 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.

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**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.

*Italics* indicate opposite chamber/conference committee amendments.



1 BY ~~adding to~~ repealing and reenacting, with amendments,  
 2 Article – Health – General  
 3 Section ~~7-404.1~~ 7-406 and 7-1006  
 4 Annotated Code of Maryland  
 5 (2009 Replacement Volume)

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

8 **Article – Health – General**

9 ~~7-404.1.~~

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

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

14 ~~(i) THE PHYSICAL OR MENTAL HEALTH STATUS OF THE~~  
 15 ~~RECIPIENT; OR~~

16 ~~(ii) THE SUPPORT SERVICES NEEDED BY THE RECIPIENT;~~  
 17 ~~AND~~

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

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

21 ~~(1) THE RECIPIENT;~~

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

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

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

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

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

4 7-406.

5 (a) IF A RECIPIENT OF MEDICAID-WAIVER SERVICES IS DENIED  
6 SERVICES TO BE PROVIDED IN ACCORDANCE WITH A PLAN OF HABILITATION  
7 UNDER § 7-1006 OF THIS TITLE, THE SECRETARY SHALL PROVIDE THE  
8 INDIVIDUAL WITH NOTICE AND AN OPPORTUNITY FOR A MEDICAID FAIR  
9 HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE  
10 GOVERNMENT ARTICLE AND FEDERAL MEDICAID LAW.

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

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

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

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

20 7-1006.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5                    (i) THE REASON FOR THE DENIAL, INCLUDING A COPY OF  
 6 ANY ADMINISTRATION EVALUATION OF THE RECIPIENT THAT RELATES TO THE  
 7 DECISION OF THE SECRETARY; AND

8                    (ii) INSTRUCTIONS FOR THE RECIPIENT TO APPEAL THE  
 9 DECISION UNDER § 7-406 OF THIS TITLE.

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

13            (G) The Secretary shall:

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

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

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.