

Chapter 502

(House Bill 900)

AN ACT concerning

Developmental Disabilities Administration – Recipient ~~Reevaluations~~ Appeals

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

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

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

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

Article – Health – General

~~7-404.1.~~

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

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

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

~~(H) THE SUPPORT SERVICES NEEDED BY THE RECIPIENT;
AND~~

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

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

~~(1) THE RECIPIENT;~~

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

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

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

~~(5) A SERVICE COORDINATOR.~~

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

7-406.

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

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

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

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

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

7-1006.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) On or before December 1 of each year, each State residential center shall provide the information required under paragraph (1)(vi) and (vii) of this

subsection to the Developmental Disabilities Administration and to the Department of Disabilities.

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

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

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

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

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

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

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

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

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

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

(G) The Secretary shall:

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

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

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

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

Approved by the Governor, May 20, 2010.