

Chapter 470

(House Bill 1172)

AN ACT concerning

Individuals With Developmental Disabilities – Providers – Licenses

FOR the purpose of requiring a person to be licensed by the Department of Health and Mental Hygiene before the person may provide services to an individual with a developmental disability or a recipient of individual support services; repealing the authority of the Developmental Disabilities Administration to license certain persons to provide certain services; requiring the Department to adopt certain regulations; altering the circumstances under which the Deputy Secretary for Developmental Disabilities may waive the requirement for a certain license; requiring the Department to make a certain approval of the composition of a governing body; ~~requiring the Secretary of Health and Mental Hygiene to adopt certain rules and regulations;~~ requiring an applicant for a certain license to submit a certain application to the Department in a certain manner; requiring an applicant to meet certain requirements to be issued a certain license; requiring the Department to conduct a certain investigation; authorizing the Department to deny a certain license under certain circumstances; altering a certain definition; requiring the Department to conduct certain inspections and to evaluate the performance of certain surveyors; requiring the Department to define certain criteria; repealing the authority of the Administration and the Office of Health Care Quality to adopt certain regulations; making conforming changes; authorizing the Department to impose certain sanctions; prohibiting a certain civil money penalty from exceeding a certain amount; requiring the Department to consider certain factors in establishing the amount of a certain civil money penalty; requiring the Department to offer a licensee an opportunity for a certain resolution under certain circumstances; requiring the Department to provide certain notice and an opportunity for a hearing under certain circumstances; requiring the Department to have the burden of proof with respect to the imposition of a certain penalty; repealing the authority of the Administration to impose a certain sanction; making a certain technical correction; providing for the effective date of this Act; and generally relating to the licensing of providers of services to an individual with a developmental disability or a recipient of individual support services by the Department of Health and Mental Hygiene.

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

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

Article – Health – General

7–903.

(a) **(1)** In addition to any other license required by law, a person shall be licensed by the [Administration] **DEPARTMENT** 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].

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

(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)] **AN ORGANIZATION APPROVED BY THE SECRETARY IN ACCORDANCE WITH § 19–2302 OF THIS ARTICLE** to provide services to an individual with a developmental disability or a recipient of individual support services, the Deputy Secretary may waive the requirement for a license by the [Administration] **DEPARTMENT**.

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

7–904.

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

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

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

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

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

1. The employee receives services from the licensee; or

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

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

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

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

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

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

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

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

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

7-905.

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

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

7-906.

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

7-907.

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

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

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

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

7-909.

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

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

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

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

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

(1) The executive officer of the licensee; or

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

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

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

(3) The regulations shall define and address:

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

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

1. The severity of the incident;
2. The quality of the licensee’s internal investigation; and

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

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

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

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

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

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

7-910.

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

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

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

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

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

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

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

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

(IV) ANY HISTORY OF SIMILAR VIOLATIONS;

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

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

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

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

(I) WRITTEN NOTICE OF:

1. THE BASIS ON WHICH THE ORDER IS MADE;

2. THE DEFICIENCY ON WHICH THE ORDER IS BASED;

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

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

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

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

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

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

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

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

Approved by the Governor, May 12, 2015.