

HOUSE BILL 1172

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By: **Chair, Health and Government Operations Committee (By Request –
Departmental – Health and Mental Hygiene)**

Introduced and read first time: February 23, 2015

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Individuals With Developmental Disabilities – Providers – Licenses**

3 FOR the purpose of requiring a person to be licensed by the Department of Health and
4 Mental Hygiene before the person may provide services to an individual with a
5 developmental disability or a recipient of individual support services; repealing the
6 authority of the Developmental Disabilities Administration to license certain
7 persons to provide certain services; requiring the Department to adopt certain
8 regulations; altering the circumstances under which the Deputy Secretary for
9 Developmental Disabilities may waive the requirement for a certain license;
10 requiring the Department to make a certain approval of the composition of a
11 governing body; requiring the Secretary of Health and Mental Hygiene to adopt
12 certain rules and regulations; requiring an applicant for a certain license to submit
13 a certain application to the Department in a certain manner; requiring an applicant
14 to meet certain requirements to be issued a certain license; requiring the
15 Department to conduct a certain investigation; authorizing the Department to deny
16 a certain license under certain circumstances; altering a certain definition; requiring
17 the Department to conduct certain inspections and to evaluate the performance of
18 certain surveyors; requiring the Department to define certain criteria; repealing the
19 authority of the Administration and the Office of Health Care Quality to adopt
20 certain regulations; making conforming changes; authorizing the Department to
21 impose certain sanctions; repealing the authority of the Administration to impose a
22 certain sanction; providing for the effective date of this Act; and generally relating
23 to the licensing of providers of services to an individual with a developmental
24 disability or a recipient of individual support services by the Department of Health
25 and Mental Hygiene.

26 BY repealing and reenacting, with amendments,
27 Article – Health – General
28 Section 7–903 through 7–907, 7–909, and 7–910
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(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.

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

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

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

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

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

13 1. The employee receives services from the licensee; or

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

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

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

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

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

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

32 (4) A written quality assurance plan, approved by the Developmental
33 Disabilities Administration, to address how the applicant will ensure the health and safety

1 of the individuals served by the applicant and the quality of services provided to individuals
2 by the applicant]:

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

7 **(2) PROVIDE FOR THE LICENSING OF PROGRAMS AND LICENSE**
8 **RENEWAL.**

9 7–905.

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

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

14 7–906.

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

17 7–907.

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

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

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

26 (2) To any entity that has a corporate officer who has served as a corporate
27 officer for an entity that has had a license revoked by the Department within the previous
28 10 years.

29 7–909.

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

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

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

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

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

11 (1) The executive officer of the licensee; or

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

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

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

25 (3) The regulations shall define and address:

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

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

31 1. The severity of the incident;

32 2. The quality of the licensee’s internal investigation; and

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

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

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

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

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

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

16 7-910.

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

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

23 **(2) THE SECRETARY MAY ADOPT RULES AND REGULATIONS**
24 **PROVIDING FOR THE SANCTIONS TO BE IMPOSED UNDER PARAGRAPH (1) OF THIS**
25 **SUBSECTION.**

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

30 **[(c)]** The Administration may impose a penalty not exceeding \$500 per day per
31 violation for each day a violation occurs on a licensee that fails to comply with the reporting
32 requirements established under § 7-306.1 (l) of this title.]

33 (d) Except as otherwise provided in § 10-226 of the State Government Article,
34 before the [Administration] DEPARTMENT takes any action AGAINST AN APPLICANT OR

1 A **LICENSEE** under this section, the [Administration] **DEPARTMENT** shall give the
2 applicant or licensee notice and an opportunity for a hearing.

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