

SENATE BILL 397

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5lr1227
CF HB 256

By: **Senators Pugh, Benson, DeGrange, Guzzone, Kelley, Klausmeier, Muse, and Nathan-Pulliam**

Introduced and read first time: February 6, 2015

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Developmental Disabilities Administration – Licensees – Duties and Immunities**
3 **– Employees**

4 FOR the purpose of requiring the Secretary of Health and Mental Hygiene to adopt rules
5 and regulations for licensees of the Developmental Disabilities Administration to
6 obtain and provide information on certain employees; requiring the rules and
7 regulations to require a licensee to carry out certain duties; requiring a licensee to
8 respond in a certain manner to a request for information; requiring a licensee to have
9 certain immunities under certain circumstances; requiring the Administration to
10 educate all licensees about certain matters; requiring the Administration, on or
11 before a certain date, to establish and maintain a database of certain employees;
12 requiring the Administration to require each licensee to submit certain information
13 to the database; requiring a licensee to submit certain information on or before
14 certain dates to the Administration for inclusion in the database; requiring the
15 Administration to phase in certain submissions and to complete the phase-in within
16 a certain time period; requiring the Secretary to establish by regulation the form,
17 manner, and deadlines for the submission and certain procedures; requiring the
18 Administration to carry out certain duties relating to the database; providing that
19 certain requirements that apply to licensees also apply to an individual who
20 self-directs certain services; authorizing an individual who self-directs services to
21 submit certain information in a certain manner; defining a certain term; and
22 generally relating to the Developmental Disabilities Administration and
23 requirements for licensees to obtain and provide information on employees.

24 BY repealing and reenacting, with amendments,
25 Article – Health – General
26 Section 7–901
27 Annotated Code of Maryland
28 (2009 Replacement Volume and 2014 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Health – General
3 Section 7–911 through 7–913
4 Annotated Code of Maryland
5 (2009 Replacement Volume and 2014 Supplement)

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

8 **Article – Health – General**

9 7–901.

10 (A) In this subtitle[, “recipient”] **THE FOLLOWING WORDS HAVE THE MEANINGS**
11 **INDICATED.**

12 (B) (1) **“EMPLOYEE” MEANS AN INDIVIDUAL WHO:**

13 (I) **FOR COMPENSATION, WORKS FOR A LICENSEE; AND**

14 (II) **HAS ROUTINE DIRECT ACCESS TO AN INDIVIDUAL WHO**
15 **RECEIVES SERVICES FROM A LICENSEE OR THE FINANCES OF AN INDIVIDUAL WHO**
16 **RECEIVES SERVICES FROM A LICENSEE.**

17 (2) **“EMPLOYEE” DOES NOT INCLUDE AN INDIVIDUAL DELIVERING OR**
18 **RETRIEVING MEDICAL EQUIPMENT.**

19 (C) **“RECIPIENT of individual support services” means an individual who**
20 **receives individual support services.**

21 **7–911.**

22 (A) **THE SECRETARY SHALL ADOPT RULES AND REGULATIONS FOR**
23 **LICENSEES TO OBTAIN AND PROVIDE INFORMATION ON EMPLOYEES AND**
24 **POTENTIAL EMPLOYEES, AS REQUIRED UNDER THIS SECTION.**

25 (B) **THE RULES AND REGULATIONS SHALL REQUIRE THAT, BEFORE HIRING**
26 **AN EMPLOYEE, A LICENSEE SHALL:**

27 (1) **IN ACCORDANCE WITH THE REQUIREMENTS FOR ADULT**
28 **DEPENDENT CARE PROGRAMS UNDER TITLE 19, SUBTITLE 19 OF THIS ARTICLE,**
29 **APPLY FOR A STATE CRIMINAL HISTORY RECORDS CHECK OR REQUEST A PRIVATE**
30 **AGENCY TO CONDUCT A BACKGROUND CHECK ON THE POTENTIAL EMPLOYEE;**

1 **(2) REVIEW THE JOB APPLICATION OF THE POTENTIAL EMPLOYEE TO**
2 **IDENTIFY THE PREVIOUS EMPLOYERS OF THE POTENTIAL EMPLOYEE;**

3 **(3) SEARCH THE DATABASE ESTABLISHED UNDER § 7-912 OF THIS**
4 **SUBTITLE TO IDENTIFY THE PREVIOUS EMPLOYERS OF THE POTENTIAL EMPLOYEE**
5 **THAT ARE LICENSEES; AND**

6 **(4) MAKE A GOOD FAITH EFFORT TO CONTACT THE EXECUTIVE**
7 **OFFICER OR THE ADMINISTRATIVE HEAD, OR THE DESIGNEE OF THE EXECUTIVE**
8 **OFFICER OR ADMINISTRATIVE HEAD, OF EACH OF THE POTENTIAL EMPLOYEE'S**
9 **EMPLOYERS IN THE PAST 6 YEARS TO INQUIRE ABOUT THE JOB PERFORMANCE OF**
10 **THE POTENTIAL EMPLOYEE IN RELATION TO THE DIRECT ACCESS SERVICES OF THE**
11 **POTENTIAL EMPLOYEE.**

12 **(C) A LICENSEE SHALL RESPOND PROMPTLY TO A REQUEST FOR**
13 **INFORMATION UNDER SUBSECTION (B)(4) OF THIS SECTION.**

14 **(D) A LICENSEE WHO PROVIDES INFORMATION IN RESPONSE TO A REQUEST**
15 **UNDER SUBSECTION (B)(4) OF THIS SECTION:**

16 **(1) IS DEEMED TO BE ACTING IN GOOD FAITH UNLESS IT IS SHOWN BY**
17 **CLEAR AND CONVINCING EVIDENCE THAT THE LICENSEE:**

18 **(I) ACTED WITH ACTUAL MALICE TOWARD AN EMPLOYEE OR A**
19 **FORMER EMPLOYEE; OR**

20 **(II) INTENTIONALLY OR RECKLESSLY DISCLOSED FALSE**
21 **INFORMATION ABOUT THE EMPLOYEE OR FORMER EMPLOYEE; AND**

22 **(2) SHALL HAVE IMMUNITY FROM LIABILITY AS PROVIDED IN § 5-432**
23 **OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE AND ANY OTHER**
24 **APPLICABLE IMMUNITIES AND PROTECTION PROVIDED BY LAW.**

25 **(E) THE ADMINISTRATION SHALL EDUCATE ALL LICENSEES ABOUT:**

26 **(1) THE DUTIES OF THE LICENSEES UNDER THIS SECTION AND §**
27 **7-912 OF THIS SUBTITLE; AND**

28 **(2) THE IMMUNITIES OF THE LICENSEES UNDER SUBSECTION (D)(2)**
29 **OF THIS SECTION AND § 7-1005 OF THIS TITLE.**

30 **7-912.**

1 **(A) ON OR BEFORE JANUARY 1, 2016, THE ADMINISTRATION SHALL**
2 **ESTABLISH AND MAINTAIN AN ELECTRONIC DATABASE OF ALL EMPLOYEES OF**
3 **LICENSEES.**

4 **(B) THE ADMINISTRATION SHALL REQUIRE EACH LICENSEE TO SUBMIT TO**
5 **THE DATABASE THE FOLLOWING INFORMATION ABOUT EACH EMPLOYEE:**

6 **(1) THE NAME OF THE EMPLOYEE;**

7 **(2) THE DATE OF BIRTH OF THE EMPLOYEE;**

8 **(3) THE LAST FOUR DIGITS OF THE SOCIAL SECURITY NUMBER OF**
9 **THE EMPLOYEE;**

10 **(4) THE NAME OF THE LICENSEE; AND**

11 **(5) THE START DATE OF EMPLOYMENT OF THE EMPLOYEE BY THE**
12 **LICENSEE.**

13 **(C) ON OR BEFORE THE 10TH BUSINESS DAY OF EACH MONTH, A LICENSEE**
14 **SHALL SUBMIT TO THE ADMINISTRATION FOR INCLUSION IN THE DATABASE THE**
15 **INFORMATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION FOR EACH**
16 **EMPLOYEE WHO STARTED EMPLOYMENT DURING THE PREVIOUS MONTH.**

17 **(D) (1) THE ADMINISTRATION SHALL PHASE IN SUBMISSION OF THE**
18 **INFORMATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION FOR CURRENT**
19 **EMPLOYEES OF LICENSEES.**

20 **(2) THE PHASED-IN SUBMISSION OF INFORMATION SHALL BE**
21 **COMPLETED WITHIN 6 MONTHS AFTER THE DATE ALL OF THE FOLLOWING ACTIONS**
22 **HAVE BEEN ACCOMPLISHED:**

23 **(I) ADOPTION OF REGULATIONS, AS REQUIRED UNDER**
24 **SUBSECTION (E) OF THIS SECTION;**

25 **(II) EDUCATION OF LICENSEES, AS REQUIRED UNDER**
26 **SUBSECTION (F)(1) OF THIS SECTION; AND**

27 **(III) PROVISION OF ACCESS TO THE DATABASE, AS REQUIRED**
28 **UNDER SUBSECTION (F)(4) OF THIS SECTION.**

29 **(E) THE SECRETARY SHALL ESTABLISH BY REGULATION:**

1 **(1) THE FORM, MANNER, AND DEADLINES FOR THE SUBMISSIONS;**

2 **(2) PROCEDURES A LICENSEE MUST USE TO OBTAIN INFORMATION**
3 **FROM THE DATABASE; AND**

4 **(3) PROCEDURES AN EMPLOYEE MAY USE TO CHALLENGE THE**
5 **ACCURACY OF THE INFORMATION ON THE EMPLOYEE IN THE DATABASE.**

6 **(F) THE ADMINISTRATION SHALL:**

7 **(1) EDUCATE ALL LICENSEES ABOUT:**

8 **(I) THE REQUIREMENTS OF THIS SECTION; AND**

9 **(II) THE IMMUNITIES PROVIDED BY LAW FOR THE DISCLOSURE**
10 **OF INFORMATION ABOUT AN EMPLOYEE'S JOB PERFORMANCE;**

11 **(2) PROVIDE TO AN EMPLOYEE, ON REQUEST, A COPY OF AN**
12 **EMPLOYEE'S EMPLOYMENT RECORD IN THE DATABASE;**

13 **(3) ENSURE ANY INACCURATE INFORMATION ON AN EMPLOYEE IN**
14 **THE DATABASE IS CORRECTED WITHIN 30 DAYS OF RECEIVING A CHALLENGE FROM**
15 **AN EMPLOYEE; AND**

16 **(4) PROVIDE ACCESS TO THE DATABASE TO EACH EXECUTIVE**
17 **OFFICER AND ADMINISTRATIVE HEAD, OR THE DESIGNEE OF THE EXECUTIVE**
18 **OFFICER AND ADMINISTRATIVE HEAD, OF ALL LICENSEES.**

19 **7-913.**

20 **(A) THE REQUIREMENTS OF §§ 7-911 AND 7-912 OF THIS SUBTITLE THAT**
21 **APPLY TO A LICENSEE SHALL ALSO APPLY TO AN INDIVIDUAL WHO SELF-DIRECTS**
22 **SERVICES RECEIVED FROM THE ADMINISTRATION.**

23 **(B) AN INDIVIDUAL WHO SELF-DIRECTS SERVICES RECEIVED FROM THE**
24 **ADMINISTRATION MAY SUBMIT THE INFORMATION REQUIRED UNDER § 7-912(B)**
25 **AND (C) OF THIS SUBTITLE:**

26 **(1) DIRECTLY; OR**

27 **(2) THROUGH THE INDIVIDUAL'S SUPPORT BROKER.**

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