



Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

February 7, 2025

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, Maryland 21401

Re: Senate Bill 507 - Criminal Procedure - Diagnosis of Developmental Disability or Intellectual Disability - Evidence - Letter of Information

Dear Chair Smith and Committee Members:

The Maryland Department of Health (Department) respectfully submits this letter of information for Senate Bill (SB) 507 - Criminal Procedure - Diagnosis of Developmental Disability or Intellectual Disability - Evidence. SB 507 would provide for conditions under which a diagnosis of Autism Spectrum Disorder, or a diagnosis of an intellectual or developmental disability, could be considered as evidence in a criminal proceeding.

SB 507 allows for evidence of an intellectual or developmental disability to be admitted by a court of law if a person meets the definition of “developmental disability” or “intellectual disability” as defined in § 7–101 of the Health-General Article. SB 507 further allows for this evidence to be furnished through expert testimony.

However, § 7–101 of the Health-General Article performs a distinct function within the internal operations of the Maryland Department of Health’s Developmental Disabilities Administration (DDA), and this function does not align with SB 507’s intention of providing a pathway for courts to utilize the terms “intellectual or developmental disability” in the context of criminal proceedings. The definitions in Health-General § 7–101 play a crucial role in determining an individual’s eligibility for the 1915(c) Medicaid home and community-based services waiver programs operated by DDA. Fewer than 25,000 individuals in the state of Maryland are presently determined to have an intellectual or developmental disability under this definition.

The definitional approach taken by SB 507 could present two potential challenges for both the court system and for DDA depending on the criteria used by the courts:

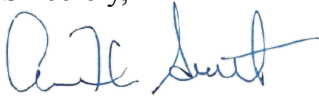
1. If the courts were to take a restrictive view of the definition of intellectual or developmental disability, only accepting direct evidence of a DDA medical eligibility determination as meeting the definition under Health-General § 7–101, many individuals

who may meet a broad definition of intellectual or developmental disability would not be able to benefit from the provisions of the bill. Additionally, such an approach could encourage defendants to attempt to apply for DDA medical eligibility without any intention of accessing the Medicaid home and community-based programs that are operated by DDA, which could place an undue burden on the medical eligibility determination process.

2. If the courts were to take an expansive view of the definition of intellectual or developmental disability, by allowing medical professionals or other experts to determine whether an individual meets the definitions in Health-General § 7-101, circumstances would likely arise under which a court could determine someone to have an intellectual or developmental disability, but DDA would not. Such a scenario would generate conflicting records and would increase the likelihood of confusion or legal dispute over the facts of individual cases placed before DDA for medical eligibility determination. Such confusion or disputes would likely place undue burden on DDA eligibility staff and on the Office of Administrative Hearings, which processes appeals of DDA medical eligibility determinations.

If you would like to discuss this further, please do not hesitate to contact Sarah Case-Herron, Director of Governmental Affairs, at sarah.case-herron@maryland.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Laura Herrera Scott'.

Laura Herrera Scott, MD, MPH
Secretary