

SENATE BILL 465

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CF HB 900

By: **Senators Lenett, Kelley, Madaleno, Middleton, and Zirkin**

Introduced and read first time: February 1, 2010

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 26, 2010

CHAPTER _____

1 AN ACT concerning

2 **Developmental Disabilities Administration – Recipient ~~Reevaluations~~**
3 **Appeals**

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

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

17 Article – Health – General
18 Section ~~7-404.1~~ 7-406 and 7-1006
19 Annotated Code of Maryland
20 (2009 Replacement Volume)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Health – General

2 ~~7-404.1.~~

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

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

7 ~~(I) THE PHYSICAL OR MENTAL HEALTH STATUS OF THE~~
 8 ~~RECIPIENT; OR~~

9 ~~(II) THE SUPPORT SERVICES NEEDED BY THE RECIPIENT;~~
 10 ~~AND~~

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

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

14 ~~(1) THE RECIPIENT;~~

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

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

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

20 ~~(5) A SERVICE COORDINATOR.~~

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

24 7-406.

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

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

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

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

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

10 7-1006.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (3) On or before December 1 of each year, each State residential center
5 shall provide the information required under paragraph (1)(vi) and (vii) of this
6 subsection to the Developmental Disabilities Administration and to the Department of
7 Disabilities.

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

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

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

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

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

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

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

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

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

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

4 **(G) The Secretary shall:**

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.