

DDA Statute Draft – All Sections
For DD Coalition Review

Md. Code Annotated, Health-General Article, Title 7

To repeal and replace the current Title 7

Subtitle 1: Definitions; General Provisions

7-101 Establishment

There is a Developmental Disabilities Administration, established as a division of the Maryland Department of Health.

7-102 Definitions

- (a) *In general.* – In this Title, the following words have the meanings indicated.
- (b) *Administration.* – “Administration” means the Developmental Disabilities Administration.
- (c) *Capacity for Independent Living.* – “Capacity for Independent Living” means the ability of an individual to perform necessary life skills, as appropriate for his or her age. Examples of necessary life skills may include but are not limited to:
- (1) Cleaning and performing basic maintenance for the home;
 - (2) Planning and preparing meals generally sufficient to meet nutritional needs;
 - (3) Maintaining and operating household equipment such as a washing machine, a vacuum, and a microwave;
 - (4) Laundering clothes;
 - (5) Using public transportation or other appropriate transportation to access the community;
 - (6) Shopping for food, clothing, and other personal and household necessities;
 - (7) Using community resources, such as stores, restaurants, services of public agencies, and recreation;
 - (8) Managing health care and medications; and
 - (9) Responding to emergencies.
- (d) *Certification.* – “Certification” means approval by the Administration for the person to provide services in the State of Maryland to an individual with a developmental disability.
- (e) *Certified Person.* – “Certified Person” means a person who possesses certification from the Administration to provide services to an individual with a developmental disability.
- (f) *Coordinator of Community Services.* – “Coordinator of Community Services” means an independent professional staff person responsible for assisting in development and review of a person-centered plan and written Person-Centered Plan designed to meet the individual’s needs, preferences, desires, goals, and outcomes in the most integrated setting.
- (g) *Court-Involved Residential Center.* – “Court-Involved Residential Center” means a related institution, as defined in § 19-301 of this Article, licensed by the Secretary to provide a

continuum of integrated services to individuals with an alleged or diagnosed intellectual disability or developmental disability who have been ordered by a court to be evaluated, confined, or committed to the Department pursuant to Title 3 of the Criminal Procedure Article, and is not an extended care or comprehensive facility..

(h) *Department.* – “Department” means the Maryland Department of Health.

(i) *Deputy Secretary.* – “Deputy Secretary” means the Deputy Secretary of the Department for the Administration.

(j) *Developmental Disability.* – “Developmental disability,” as used in this Article and in the Courts and Judicial Proceedings Article, means a condition that meets each of the following criteria:

(1) The condition is attributable to one of the following diagnoses, as documented in a report by a licensed professional as identified in regulations adopted by the Secretary:

(i) An intellectual disability; or

(ii) A condition that results in substantial functional limitations similar to intellectual disability, such as Autism Spectrum Disorder, cerebral palsy, Down’s syndrome, epilepsy, global developmental delay, fetal alcohol spectrum disorders, Fragile X syndrome, muscular dystrophy, Prader-Willi syndrome, spina bifida, traumatic brain injury, a neurodevelopmental disorder, or other specific condition approved for inclusion by the Secretary as identified in regulations adopted by the Secretary;

(2) The condition results in substantial functional limitations, as determined by assessments identified in the Administration’s regulations and administered by a licensed professional as identified in regulations adopted by the Secretary, in three or more of the following areas of life activity:

(i) Self-care;

(ii) Understanding and Use of Language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for Independent Living;

(3) Both the condition and its resultant substantial functional limitations, as determined in accordance with subsections (1) and (2), respectively, are manifested before the individual reaches the age of 22;

(4) Both the condition and its resultant substantial functional limitations, as determined in accordance with subsections (1) and (2), respectively, are likely to continue indefinitely; and

(5) Both the condition and its resultant substantial functional limitations, as determined in accordance with subsections (1) and (2), respectively, require the level of care provided in a hospital, nursing facility, or an intermediate care facility for individuals with intellectual disabilities as determined by a tool identified in the Administration’s regulations.

(k) *Direct Support Professional.* – An individual who provides direct care services to a recipient.

(l) *Facility.* – “Facility” means a State Residential Center or the Court-Involved Residential Center operating in the State of Maryland.

(m) *Fee-for-service.* – “Fee-for-service” means a method for payment whereby a person submits a claim for payment to the Department for each service performed.

(n) *Habilitation services.* – “Habilitation services” means services that help an individual keep, learn, or improve skills and function independently.

(o) *Interdisciplinary Team.* – “Interdisciplinary Team” means the team of professionals, across disciplines and service areas, who identify the individual’s needs by application of comprehensive assessments and design service programs to meet the individual’s identified needs.

(p) *Learning.* – “Learning” means the ability of an individual to acquire, retain, and apply information and skills, as appropriate for his or her age.

(q) *License.* – “License” means approval by the Department for the person to provide services in the State of Maryland to an individual with a developmental disability.

(r) *Licensee.* – “Licensee” means a person who possesses a license from the Department to provide services in the State of Maryland to an individual with a developmental disability.

(s) *Low-Intensity Support Services.* – “Low-Intensity Support Services”

(1) means a program, funded and administered by the Administration, designed to provide for the needs of an individual who is eligible under § 7-201 and is living in the home or community; and

(2) includes services and items as defined in the Administration’s regulations.

(t) *Meaningful Day services.* – “Meaningful Day services” means individualized employment supports or community-based supports that assist the individual in developing skills and personalized connections that may create opportunities for paid employment, independence, and meaningful relationships with individuals in the community.

(u) *Mobility.* – “Mobility” means the skill of an individual to move about from place to place inside and outside the home, as appropriate for his or her age.

(v) *Person.* – “Person” has the same meaning as set forth in § 1-101 of this Article.

(w) *Person-Centered Plan.* – “Person-Centered Plan” means a plan, developed by a planning process driven by the individual, that:

(1) identifies the goals and preferences of the individual with developmental disability;

(2) identifies services to support the individual in pursuing his or her personally defined outcomes in the most integrated community setting;

(3) directs the delivery of services that reflect the individual’s personal preferences and choice; and

(4) identifies the individual’s specific needs that must be addressed to ensure the individual’s health and welfare.

(x) *Provider.* – “Provider” means a person who is a licensee or a certified person under this Title and provides services to a recipient or individual with a developmental disability who receives funding for services from a source other than the Administration.

(y) *Recipient.* – “Recipient” means an individual who receives services funded by the Administration under this Title.

(z) *Residential services.* – “Residential services” means individualized support services that assist the individual in developing skills for living independently in the community through application of teaching methods in a community residential setting.

(aa) *Respite services.* – “Respite services” means services made available for an individual with a developmental disability to provide relief for the individual with a developmental disability or the person with whom the individual ordinarily lives.

(bb) *Secretary.* – “Secretary” means the Secretary of the Maryland Department of Health.

(cc) *Self-care.* – “Self-care” means the performance of activities that promote and maintain the personal hygiene of the individual, as appropriate for his or her age. This includes, but is not limited to, bathing, toileting, tooth brushing, dressing, grooming, eating, or drinking.

(dd) *Self-direction.* – “Self-direction” means the ability of an individual to initiate, solve problems with, organize, or carry out goal-directed activities related to self-care, socialization, recreation, work, and personal finances, as appropriate for his or her age. This does not relate to the objective value of an individual’s goals or plans, but the capacity to know, plan, and act on a course of action based on personal values or goals.

(ee) *State Residential Center.* – “State Residential Center” means a licensed facility operated by the State of Maryland to provide residential and habilitation services to individuals with intellectual disability over the age of 18 meeting criteria set forth in § 7-602 of this Title.

(ff) *Substantial Functional Limitation definition.*

(1) “Substantial Function Limitation” means an absence of ability to the degree that the individual requires supports, reminders, and prompts or accommodations not typically provided or made for other individuals of a similar age in order to enter or engage in the community, or remain in a home or community setting.

(2) For both the “Understanding and Use of Language” and the “Mobility” areas of life activity, if the individual can use an adaptive method or equipment, then the Substantial Functional Limitation is assessed while the adaptive method or equipment is being used.

(gg) *Support services.* – “Support services” means supports that assist the individual to maintain or improve his or her functional abilities, enhance interactions, engage in meaningful relationships, and promote his or her ability to live independently and meaningfully participate in his or her community.

(hh) *Understanding and Use of Language.* – “Understanding and Use of Language” means the ability of an individual to effectively exchange (give and receive) information through words or concepts, as appropriate for his or her age. This includes the ability to establish and maintain personal and community relationships through effective means of communication.

(ii) *Waiver program.* – “Waiver program” means each Medicaid Home- & Community-Based Services Waiver funding program submitted by the Department and approved by the Centers for Medicare & Medicaid Services pursuant to § 1915(c) of the Social Security Act, which is overseen and administered by the Administration.

(jj) *Waiver program services.* – “Waiver program services” means services funded by the Administration pursuant to a Waiver program, including, but not limited to:

- (1) Meaningful Day services;
- (2) Residential services; and
- (3) Support services.

7-103 Purpose – Legislative Policy

It is the policy of this State:

(1) To promote, protect, and preserve the human dignity, constitutional rights and liberties, social well-being, and general welfare of individuals with developmental disability in this State;

- (2) To encourage the full development of the ability and potential of each individual with developmental disability in this State, no matter how significant the individual's disability;
- (3) To promote the economic security, standard of living, and meaningful employment of individuals with developmental disability;
- (4) To foster the integration of individuals with developmental disability into the ordinary life of the communities where these individuals live;
- (5) To support individuals with developmental disability in the most integrated setting;
- (6) To recognize the right of those individuals with developmental disability to choose where they live and with whom;
- (7) To develop and provide for systems of support for families throughout the lifespan of individuals with a developmental disability;
- (8) To promote professional development related to developmental disability; and
- (9) To promote public understanding of these policies and programs provided in this Title.

7-104 Authority & Role

(a) *Scope of Authority.* The Administration is authorized to oversee the day-to-day operations and management of services and funding for individuals with a developmental disability as provided under this Title.

(b) *Role.* The Administration's role is limited to the scope of its authority. The Administration will not contravene or supplant services provided by or decisions made by other divisions of the Department or other State agencies. The Administration may coordinate with other divisions of the Department and other State agencies when services provided by or decisions made by these divisions or agencies may impact individuals with a developmental disability whom the Administration serves.

7-105 Authority to Promulgate Rules & Regulations

The Secretary of the Department, on behalf of the Administration, has the authority to promulgate rules and regulations consistent with this Title 7 and other applicable law with respect to following:

- (a) Application and determination processes for Eligibility;
- (b) Application and determination processes for requesting covered services;
- (c) Delivery of covered services;
- (d) Application, qualifications, determination, oversight and sanctioning requirements and processes for providers to be approved and licensed or certified to provide services;
- (e) Payment requirements and procedures;
- (f) Admission requirements and processes, transfer and discharge requirements and processes, and other requirements applicable to the State Residential Centers and Court-Involved Residential Center operated by the Administration on behalf of the Department;
- (g) Ensuring individual health and welfare;
- (h) Individual rights and grievance processes; and
- (i) Hearing and appeal requirements and processes with respect to the Administration's decisions.

7-106 Construction of Title

(a) *Consistent with Policy and Administration's Authority.* This Title shall be construed in a manner consistent with the policy and the Administration's authority as stated in this Subtitle.

(b) *Effect on other services.* This Title does not prevent individuals with developmental disability from being eligible for services provided by any other State agency.

Subtitle 2: Eligibility for Services

7-201 Eligibility for Services Funded by the Administration

(a) *Eligibility for Waiver program services.* An individual will be eligible to receive Waiver program services funded by the Administration pursuant to this Title if he or she:

(1) Has a developmental disability, as determined by the Administration in accordance with this Subtitle; and

(2) Meets all applicable financial, technical, and other criteria for enrollment in one of the Administration's Waiver programs.

(b) *Annual review of eligibility for Waiver program services.* The Department will review an individual's eligibility for Waiver program services on an annual basis to determine if he or she meets the criteria set forth in subsection (a).

(c) *Eligibility for Low-Intensity Support Services.* An individual will be eligible to receive Low-Intensity Support Services if he or she has a severe chronic disability that:

(1) Is attributable to a physical or mental impairment, other than the sole diagnosis of mental illness, or to a combination of physical and mental impairments; and

(2) Is likely to continue indefinitely.

(d) *Initiation of Waiver program services.* If an individual is determined eligible for Waiver program services funded by the Administration, then he or she will receive Waiver program services when either:

(1)

(i) He or she is next priority on the Waiting List in accordance with § 7-203 of this Subtitle;

(ii) A Person-Centered Plan is completed pursuant to § 7-204 of this Subtitle; and

(iii) The Administration has authorized services requested by the individual pursuant to § 7-205 of this Subtitle; or

(2) An emergency circumstance requires immediate intervention as defined in the Administration's regulations.

(e) *Eligibility for other Administration services.* An individual, who is not otherwise eligible for Waiver program services or Low-Intensity Support Services as provided in subsections (a) and (c) above, may be eligible for other services funded solely by the Administration, as provided in § 7-301(d) of this Title, including individuals receiving services funded solely by the Administration prior to July 1, 2019.

7-202 Application for Waiver Program Services

(a) *By whom.* An application for Waiver program services may be made as provided in this Subtitle by:

- (1) The individual, if the individual is an adult; or
- (2) Any other person who has a legitimate interest in the welfare of the individual.

(b) *Information in application.*

(1) Except as otherwise provided in this Title, an applicant for services provided or funded, wholly or partly, by this State shall submit an application to the Department in writing.

(2) The application shall contain the information that the Department requires.

(c) *Referrals to Behavioral Health Administration.* If the Secretary determines, based on the application, that the individual has a sole diagnosis of mental illness, the Secretary shall refer the individual to the Behavioral Health Administration.

7-202.1 Military Families

(a) *“Legal resident” defined.* In this section, “legal resident” means an individual who maintains the State as the individual’s principal establishment, home of record, or permanent home and to where, whenever absent due to military obligation, the individual intends to return.

(b) *Entitlement of dependents to services during deployment of resident.* A dependent of a legal resident of the State who is determined eligible to receive services from the Administration under this Title shall retain eligibility for the services:

- (1) Regardless of whether the legal resident leaves the State due to the legal resident’s military assignment outside the State; and
- (2) If the dependent is otherwise eligible for services.

(c) *Waiting lists.* If a dependent of a legal resident is on a waiting list for services to be provided under this Title, the Administration shall allow the dependent to remain on the waiting list for services while the legal resident is outside the State due to the legal resident’s military assignment outside the State.

(d) *Reinstatement of services.* The Administration shall reinstate services provided under this Title to a dependent of a legal resident who resides with the legal resident while the legal resident is outside the State due to the legal resident’s military assignment outside the State:

- (1) On the relocation of the dependent to the State; and
- (2) If a request for services is made.

7-202.2 Application for Low-Intensity Support Services

(a) The Administration shall develop a simplified application process for Low-Intensity Support Services in accordance with this section, to be set forth in the Administration’s regulations.

(b) *By whom.* An application for Low-Intensity Support Services may be made as provided in this Subtitle by:

- (1) The individual, if the individual is an adult; or

(2) Any other person who has a legitimate interest in the welfare of the individual.

(c) *Information in application.*

(1) Except as otherwise provided in this Title, an applicant for services provided or funded, wholly or partly, by this State shall submit an application to the Administration in writing.

(2) The application shall contain the information that the Administration requires.

(d) An individual seeking Low-Intensity Support Services is not required to submit an application to the Department as provided in § 7-202 of this Title.

7-203 Waiting List for Waiver Program Services

(a) *Established.* In order to ensure the individuals with the greatest needs, who are eligible for Waiver program services pursuant to § 7-201(a), receive services first, the Administration shall establish a Waiting List.

(b) *Priority and Reserved Funding Categories defined.* The Administration will define any priority and reserved funding categories for the Waiting List in the Administration's regulations.

(c) *Initial Determination of Priority.* Upon initial determination of eligibility in accordance with §§ 7-201 and 7-202, the Administration shall determine the individual's priority on the Waiting List as set forth in the Administration's regulations.

(d) *Notice of Determination of Priority.* The Administration shall provide notice of its determination of the individual's priority on the Waiting List, including the individual's appeal rights in accordance with § 7-206.

(e) *Re-evaluation of Waiting List Priority.* The Administration shall re-evaluate an individual's priority on the Waiting List either:

(1) On an annual basis as part of the annual review of the Person-Centered Plan in accordance with § 7-204 of this Subtitle; or

(2) When notified, upon a change of the individual's circumstances.

7-204 Person-Centered Plan

(a) *In general.* Each individual who is eligible for and approved by the Administration to receive services pursuant to § 7-201(a), (d), and (e), Subtitle 6, or Subtitle 7 will have a Person-Centered Plan.

(b) *Development.* Each individual will work with a Coordinator of Community Services in developing his or her Person-Centered Plan on an annual basis, or more frequently as necessary, in accordance with the Administration's regulations.

(c) *Content.* Each Person-Centered Plan must contain information and be in the form that is required by the Administration in its regulations.

7-205 Requesting Services

(a) *In general.* Each individual who is eligible for services pursuant to § 7-201 must submit a request in writing for the services he or she is seeking to the Administration.

(b) *Content.* Each request for services must contain information and be in the form that is required by the Administration in its regulations.

7-206 Appeal Rights of Applicants for and Recipients of Services

(a) *In general.* An individual applicant for or recipient of services provided by the Administration under this Title shall have the right to appeal the following determinations or actions by the Administration as set forth in this section.

(b) *Medicaid Fair Hearing.* The Secretary of the Department shall provide notice and an opportunity for a Medicaid Fair Hearing in accordance with Title 10, Subtitle 2 of the State Government Article and regulations adopted by the Department.

(c) *State Hearing.* The Secretary of the Department shall provide notice and an opportunity for a State Hearing in accordance with Title 10, Subtitle 2 of the State Government Article and applicable regulations.

Subtitle 3: Covered Services

7-301 Covered Services

(a) *In general.* The Administration will fund services as provided in this section of this Title.

(b) *Waiver program services.* For individuals who are eligible for Waiver program services pursuant to § 7-201 of this Title, the Administration will fund Waiver program services set forth in the applicable Waiver program in which the individual is enrolled in accordance with that Waiver program's requirements.

(c) *Low-Intensity Support Services.* For individuals who are eligible for Low-Intensity Support Services pursuant to § 7-201 of this Title, the Administration will fund Low-Intensity Support Services, dependent on the availability and allocation of funds provided to the Administration by the General Assembly, as set forth in the Administration's applicable regulations. Low-Intensity Support Services shall be flexible to meet the needs of individuals and their families.

(d) *Other services.* Dependent on the availability and allocation of funds provided to the Administration by the General Assembly, the Administration may fund other services in addition to Waiver program services and Low-Intensity Support Services for individuals.

Subtitle 4: Provider Requirements

7-401 License or Certification Required

(a) *License required.* In addition to any other license required by law, a person shall be licensed by the Department before the person may provide services, identified in the Administration's regulations, to an individual with developmental disability.

(b) *Certification required.* In addition to any other license or certification required by law, a person shall be certified by the Administration before the person may provide services, identified in the Administration's regulations, to an individual with developmental disability.

(c) *Waiver of licensure requirement.*

(1) If a person is licensed or certified by another Maryland State agency or accredited by an organization approved by the Secretary in accordance with § 19-2302 of this Article to provide services to a recipient, the Deputy Secretary may waive the requirement for a license or certification by the 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 provided pursuant to paragraph (1) of this subsection.

(d) *Scope of license or certification.* A license or certification authorizes the licensee or certified person to provide services while the license or certification is effective.

(e) *Duration of license or certification.* Subject to § 7-408, a license or certification will be effective for three years.

(f) *Renewal of license or certification.* The Department may renew a license or certification if the licensee or certified person:

(1) Has complied with this Subtitle and the regulations adopted under this Subtitle; and

(2) Submits to the Department a completed renewal application on the form the Department requires.

(g) *License and certification not transferrable.* A license or certification issued under this Subtitle is not transferrable.

(h) *Right to practice health occupation.* This Subtitle does not limit the right of any person to practice a health occupation that the individual is licensed or otherwise authorized to practice under the Health Occupations Article.

7-402 Rules & Regulations

(a) *In general.* The Department shall adopt rules and regulations for the licensing or certification of persons providing services to a recipient, including the services requiring licensure or certification under § 7-401.

(b) *Services provided in accordance with policy.* The rules and regulations shall ensure that services to a recipient are provided in accordance with the policy stated in § 7-103.

(c) *Rules and regulations requirements.*

(1) The rules and regulations shall require that:

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

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

1. The employee receives services from the provider; or

2. The Department explicitly approves the composition of the governing body in accordance with the Administration's regulations.

(2) The requirements of paragraph (1)(i) of this subsection may be waived if a community-based advisory board, committee, or local subsidiary board is established by the provider, which is national organization, and approved by the Department.

(d) The rules and regulations shall also require that an applicant for a license or certificate under this Subtitle shall demonstrate to the Department the applicant's capability to provide for or arrange for the provision of all applicable services required by this Title by

submitting to the Department an application that, at a minimum, includes documents identified in the Department's regulations.

7-403 Application for A License or Certification

- (a) *Form.* An applicant for a license or certification shall submit an application to the Department on the form that the Department requires.
- (b) *Contents.* The application shall provide the information that the Department requires.
- (c) *Review.* When an application for a license or certification is filed, the Department promptly shall review the application and the applicant.

7-404 Issuance of License or Certification

- (a) *In general.* An applicant for a license or certification shall meet all the requirements in rules and regulations adopted under §§ 7-105 and 7-402 of this Subtitle to be issued a license or a certificate.
- (b) *Denial of license or certification.* The Department may deny a license or certification:
 - (1) To any person that has had a license or certification revoked by the Department within the previous 10 years;
 - (2) To any person that has a corporate officer who has served as a corporate officer for an entity that has had a license or certification revoked by the Department within the previous 10 years;
 - (3) To any person that has voluntarily surrendered a license or certification to the Department while not in good standing, as defined in the Administration's regulations, within the previous 10 years;
 - (4) To any person that has had a license or certification revoked by another State within the previous 10 years; or
 - (5) If the Department finds that the applicant:
 - (i) Does not meet the requirements of this Subtitle or any rules or regulations adopted under this Subtitle; or
 - (ii) Fraudulent or deceptively attempts to obtain a license or certification.

7-405 Inspection of Provider

- (a) *In general.*
 - (1) The Department shall inspect each provider at least every two years and at any time the Department considers necessary.
 - (2) The provider must permit the Department to inspect its premises and records.
 - (3) The 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 and certification requirements.
- (b) *Inspection reports.* The Department shall keep a report of each inspection.

(c) *Attention to deficiencies.* The Department shall bring any deficiencies to the attention of:

- (1) The provider's (i) executive officer; and (ii) president of board; or
- (2) The State-designated protection and advocacy agency.

7-406 Required Reporting

(a) *In general.* Each provider, and its employees or contractors, is required to comply with all mandated reporting requirements set forth in this section or in other applicable law and regulation.

(b) *Deaths of individuals in services or programs.*

(1) *Notification of death.*

(i) Upon notification of the death of a recipient receiving services from a provider or Facility, the administrative head of the provider or Facility shall report the death:

1. Immediately to the sheriff, police, or chief law enforcement in the jurisdiction in which the death occurred;

2. Immediately to the Deputy Secretary or his or her designee; and

3. By close of business the next working day to the State-designated protection and advocacy agency.

(ii) A report may be oral, if followed by a written report, or written, and shall contain the information required by the Department, as provided in the Department's regulations.

(2) *Investigation.* The sheriff, police, or chief law enforcement officer shall inform a medical examiner in accordance with § 5-309(b) of this Article, and the medical examiner, if necessary, shall conduct an investigation in accordance with the provisions of that section.

(c) *Reporting of abuse or neglect.* In addition to any other reporting requirement of law, a person who believes that an individual with developmental disability has been abused or neglected promptly shall report the alleged abuse or neglect in accordance with § 7-807 of this Title.

(d) *Regulations for reporting serious incidents.* The Department shall adopt regulations that establish a system of prioritization to respond to and investigate serious reportable incidents, as defined by the Department, that threaten the health, safety, and well-being of individuals receiving services funded by the Department in a State-operated Facility and in community programs licensed or certified by the Department.

7-407 Provider required to provide information on request

On request, the provider shall give to the Deputy Secretary, or a designee of the Deputy Secretary:

- (1) Any information that the provider has about an individual served by the provider;
- (2) Access to the records of the provider;
- (3) Access to any individual served;
- (4) Access to the records of individuals served by the provider; and
- (5) Access to any part of the premises of the provider.

7-408 Disciplinary Action on License or Certification

(a) *In general.* The Department shall suspend, revoke, or sanction a license or certification if the provider fails to comply with the applicable laws, rules, or regulations of this State.

(b) *Sanctions for failure to comply with applicable State laws, regulations, or rules.*

(1) The Department may impose sanctions, including a civil money penalty, for failure by a provider to substantially comply with applicable State laws, regulations, or rules.

(2) The Department shall adopt rules and regulations providing for the sanctions to be imposed under this subsection.

(3) A civil money penalty imposed under this subsection may not exceed \$5,000 per incident.

(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 provider;

(iii) The efforts made by the provider 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 provider to continue serving individuals; and

(vi) Any other reasonable factors as determined by the Department.

(5) If the civil money penalty is proposed, the Department shall offer the provider 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.

(c) *Penalty for false statements.* Any applicant or provider 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.

(d) *Penalty for failure to comply with reporting requirements.* The Department may impose a penalty, not exceeding \$500 per day per violation for each day a violation occurs, on a provider that fails to comply with the reporting requirements established under § 7-406 and § 7-504 of this Title.

(e) *Hearing.* Except as otherwise provided in § 10-226 of the State Government Article and subsection (f) of this section, before the Department takes any action against an applicant or a

provider under this section, the Department shall give the applicant or provider notice and an opportunity for a hearing.

(f) *Emergency action required.*

(1) If the Department finds that the public health, safety, or welfare of individuals with a developmental disability receiving services from a provider imperatively requires emergency action, the Department may suspend the license or order a provider to remedy immediately the situation requiring the emergency action.

(2) The order to remedy immediately the situation shall be effective immediately and shall remain in effect until:

(i) The Department rescinds the order; or

(ii) There is a resolution through the administrative hearing process.

(3) If the Department issues an order under paragraph (1) of this subsection, the Department shall promptly give the provider:

(i) Written notice of the order, the finding, and the reasons that support the finding; and

(ii) An opportunity to be heard.

7-409 Providing services unlawfully

(a) *Providing services in violation of section; noncompliance with licensing laws.*

Except as provided in regulations promulgated by the Department for private arrangements, a person may not provide any of the following services to an individual with developmental disability unless the person has a license or certification from the Administration to provide the services, regardless of whether the Administration or another state's agency funds these services:

(1) Residential services;

(2) Meaningful Day services;

(3) Support services; and

(4) Respite services.

(b) *Penalty.* A person who provides services in violation of subsection (a) is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$10,000.

(c) *Knowing participation in violation of section; penalty.* An employee, officer or director of a provider of services under this Title or any other person who knowingly participates in a violation of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$5,000, or imprisonment not exceeding 1 year, or both.

(d) *Civil damages.* In addition to any other penalties specified in this section, an individual who is admitted or held against the individual's will by a person who is providing services without a license or certification may recover civil damages from that person and from any other person who knowingly participates in the admission or detention.

7-410 Unlawful remuneration of funds

(a) *Receiving unauthorized compensation.* A State employee may not receive or solicit, directly or indirectly, any remuneration for providing services to an individual eligible for services under this Title except for compensation provided for in the State budget, those charges provided in Title 16 of this Article, and funds received in accordance with subsection (b) of this section.

(b) *Accepting nonbudgeted funds.*

(1) A State Residential Center or Court-Involved Residential Center may accept nonbudgeted funds that are available to it but are not part of the appropriations process in this State

(2) A State Residential Center or Court-Involved Residential Center may accept these funds only under the policy or regulations that the Secretary sets.

(c) *Employees of providers receiving unauthorized compensation.* An employee of a licensed or certified provider may not receive or solicit, directly or indirectly, any remuneration for providing services within the scope of that employment to an individual eligible for services under this Title, other than compensation provided by the licensed or certified provider.

(d) *Penalty.* A person who knowingly violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$5,000.

7-411 Designation as single-family dwelling

(a) *Applicability of section.* This section applies only to providers who furnish residential services, and locations in which residential services are provided, under this Title.

(b) *Deemed single-family dwelling; location in all residential zones; not subject to special exceptions, conditional use permits, etc.*

(1) To avoid discrimination in housing and to afford a natural, residential setting, the location in which residential services are provided for individuals with developmental disability:

- (i) Is deemed conclusively a single-family dwelling;
- (ii) Is permitted to locate in all residential zones; and
- (iii) May not be subject to any special exception, conditional use

permit, or procedure that differs from that required for a single-family dwelling.

(2) The provision of separately identified living quarters for staff, including direct support professionals, may not affect the conclusive designation as a single-family dwelling under paragraph (1)(i) of this subsection.

(3) A general zoning ordinance, rule, or regulation of any political subdivision that conflicts with the provisions of this section or any rule or any regulation that carries out the purpose of this section is superseded by this section to the extent of any conflict.

Subtitle 5: Payment Requirements

7-501 Fee-for-Service Payment System for Waiver Program services

(a) *In general.* Beginning July 1, 2019, the Administration will pay each provider on a fee-for-service basis for Waiver program services it renders to individuals with a developmental disability who are eligible for services pursuant to § 7-201 of this Title.

(b) *Promulgation of regulations.* The Administration shall adopt rules and regulations governing fee-for-service payment and reporting requirements and procedures consistent with this Subtitle 5 and other applicable laws.

7-502 Fee-for Service Payment Requirements and Procedures for Waiver Program Services

(a) *Fee-for-service rates.*

(1) *Establishment.* By July 1, 2019, the Administration will determine and establish rates for its Waiver program services, covered under § 7-301 of this Title, dependent on the availability and allocation of funds provided by the General Assembly each year.

(2) *Notice of billing rate.* The Administration will publish the established fee-for-service rates for its Waiver program services, and any subsequent changes to those rates, in its regulations.

(3) *Increases.* The Administration may direct that any subsequent increases in the established fee-for-service rates be used to increase the wages of direct support professionals who provide Waiver program services and other operational costs.

(b) *Claim for Payment.* In order to receive payment for Waiver program services rendered under this Title, each provider is required to submit a claim for payment to the Department on a form that the Department requires.

(1) *Timeliness of submission.* Payment may not be made for a claim that is received by the Department more than one calendar year after the date the services were rendered.

(2) A provider who fails to submit a claim for payment within this required timeframe may not recover the amount from the recipient.

(c) *Prohibition of fraudulent claims.* A provider is prohibited from submitting a false or fraudulent claim for payment or other documentation that contain fraudulent claims for payment.

7-503 Payment Procedures and Requirements for Non-Waiver Program Services

For covered services set forth in § 7-301, which are not Waiver program services, the Administration will either establish payment procedures and requirements in its regulations, such as for Low-Intensity Support services, or comply with applicable law and regulations governing payment of grants or other services.

7-504 Reporting Requirements

(a) *In general.* In order to receive payment for services, a provider must submit reports to the Department as required in this §7-504 and the Administration's regulations.

(b) *Audited financial statements.* On an annual basis, each provider must complete and submit to the Administration financial statements for each fiscal year that are audited by an independent certified public accountant.

(c) *Waiver program services.* A provider that furnishes Waiver program services is required to adhere to all applicable laws and regulations governing financial documentation, reporting, and other payment related requirements for Medicaid providers.

(d) *Direct support professional wages.* A provider must submit information required by the Administration, on a form approved by the Administration, relating to wages and benefits paid to direct support professionals.

(e) The Department and Administration may require a provider to submit additional reports and information related to provision of services to individuals with a developmental disability.

7-505 Right of Audit and Recovery

(a) The Department retains the right to conduct an audit of a provider's records supporting its claim for payment under this Subtitle 5 at any time.

(b) The provider shall reimburse the Department for any overpayment..

(c) This section also applies to a person that provides Waiver program services under the Self-Directed Services delivery model set forth and defined in the Department's regulations.

7-506 Waiting List Equity Fund

(a) *In general.*

(1) There is a continuing, nonlapsing Waiting List Equity Fund in the Maryland Department of Health.

(2) The purpose of the Waiting List Equity Fund is to ensure that:

(i) When individuals leave State Residential Centers, the net average cost of serving them in the State Residential Center, as defined in subsection (d)(2) of this section, shall follow them to community-based services; and

(ii) Any funds remaining, after the individuals leaving State Residential Centers are served, are used to provide community-based services to individuals eligible for, but not receiving, the community-based services as set forth in the Administration's regulations.

(b) *Community-based services.* Subject to the appropriation process in the annual operating budget, the Department shall use the Waiting List Equity Fund for providing community-based services to individuals eligible for, but not receiving, services from the Administration as set forth in the Administration's regulations.

(c) *Contents of Fund.*

(1) The Waiting List Equity Fund shall consist of:

(i) Subject to the appropriation process in the annual operating budget, funds which are equal to the cost of providing services to an individual in a State Residential Center for each fiscal year, or part of a fiscal year, that the individual is no longer served in a State Residential Center and is provided community-based services as defined in paragraph (2) of this subsection;

(ii) The net proceeds from contributions under the income tax checkoff system established under § 2-113 of the Tax-General Article; and

(iii) Any other money from any other source accepted for the benefit of the Fund.

(2) In determining funding for the Waiting List Equity Fund, the cost of providing services to an individual in a State Residential Center shall be calculated in accordance with the Administration's regulations.

(d) *Regulations for Management of money in Fund.*

(1) The Department shall adopt regulations for the management and use of the money in the Fund.

(2) The regulations shall authorize the use of money in the Fund to provide services to individuals who are eligible for, but not yet receiving, services under this Title.

(e) *Reporting requirements.*

(1) On or before January 1 of each year the Secretary shall prepare a report to be submitted to the General Assembly and the Department of Legislative Services on the Waiting List Equity Fund.

(2) The report shall include:

(i) An accounting of all receipts and expenditures to and from the Fund;

(ii) The number of individuals who left and entered State Residential Centers during the previous year;

(iii) The number of additional individuals who were on the waiting list for services funded by the Administration during the previous year; and

(iv) An accounting of each of the factors used in determining the cost of providing services to an individual in a State Residential Center.

(f) *Unspent money.* Any unspent portions in the Waiting List Equity Fund and any interest earned on money in the Waiting List Equity Fund may not be transferred or revert to the General Fund of the State, but shall remain in the Waiting List Equity Fund to be used for the purposes specified in this section.

7-507 Funding for work activity centers or other sheltered workshops paying less than minimum wage prohibited

Beginning October 1, 2020, the Administration may not fund providers that pay individuals less than the minimum wage under a certificate that the United States Department of Labor issues to a work activities center or other sheltered workshop, pursuant to the Fair Labor Standards Act, Section 14(c), 29 U.S. Code § 214, to allow the work activities center or workshop to pay an individual less than the wage otherwise required for the individual under federal law.

Subtitle 6: State Residential Centers for Individuals with an Intellectual Disability

Part I: State Residential Centers

7-601 Creation and Licensure

(a) *Creation.* There are State Residential Centers for individuals with an intellectual disability operated by the Administration.

(b) *Licensure.* Each State Residential Center shall be licensed by the Secretary to provide a residential and habilitation services to individuals it serves.

(c) *Administrative head.* The Deputy Secretary shall appoint an administrative head for each State Residential Center.

7-602 Admissions

(a) *Criteria.* In order to be admitted to and receive services from a State Residential Center, an individual must meet each of the following criteria for admission at the time of his or her application to the State Residential Center for admission and throughout his or her stay at the State Residential Center:

- (1) The findings of the evaluation are that the individual:
 - (i) has an intellectual disability; and
 - (ii) needs residential services for the individual's adequate habilitation;

and

(2) There is no less restrictive setting in which the needed services can be provided that is available to the individual or will be available to the individual within a reasonable time.

(b) *Admissions.*

(1) *Approval of admission.* The Deputy Secretary, or his designee, shall approve the admission of an individual to a State Residential Center if that individual meets the criteria set forth in subsection (a) of this section.

(2) *Denial of admission.* The Deputy Secretary, or his designee, may not approve the admission of an individual to a State Residential Center if that individual does not meet the criteria set forth in subsection (a) of this section.

(3) *Providing least restrictive service.* The Deputy Secretary, or his designee, shall provide an individual with the appropriate least restrictive service consistent with the individual's welfare, safety, and Person-Centered Plan, if the individual:

- (i) Has an application for services that has been approved under this Subtitle 2 of this Title; or
- (ii) Is considered eligible for transfer under this Title by the Deputy Secretary or the Deputy Secretary's designee.

(c) *Hearing on admission.* Within 21 days after the admission of an individual to a State Residential Center, a hearing officer of the Department shall hold a hearing on the admission in accordance with this subsection (c) and applicable rules and regulations.

(1) *Notice of admission.* Written notice of the admission of an individual and of the date, time, and place of the individual's hearing on admission shall be given:

- (i) On admission, to the individual; and
- (ii) As soon as possible, but not later than 5 days after the admission, to legal counsel for the individual and to the proponent of the admission.

(2) *Contents of notice.* The written notice required by subsection (c)(1) shall state:

- (i) The name of each proponent of the admission;
- (ii) The right of the individual who has been admitted:
 1. To consult with and be represented by a lawyer; and
 2. To call witnesses and offer evidence at the hearing on admission in accordance with the hearing procedures set forth in applicable law and regulations;
- (iii) The availability of the services of the legal aid bureaus, lawyer referral services, and other agencies that exist for the referral of individuals who need legal counsel;

(iv) The rights of individuals with developmental disability under Subtitle 8 of this Title; and

(v) The rights of individuals to release under § 7-605 of this subtitle.

(3) *Forms.* The Department shall prepare and provide each State Residential Center with standard forms that set forth, in clear and simple words, the notice provisions of this subsection (c).

(4) *Findings supporting admission.* At the hearing, in order to certify the admission of the individual, it must be affirmatively shown by clear and convincing evidence that the conclusions leading to the decision to admit the individual are supported by the finding that the individual meets the criteria set forth in subsection (a) of this section.

(i) If the hearing officer shall find from the admissible evidence that the conclusions leading to the admission are not proved, the hearing officer shall so certify and the individual shall be released from the State Residential Center.

(ii) If the hearing officer shall find from clear and convincing evidence that all of the admission requirements have been proved, the hearing officer shall so certify and the individual's admission shall be considered approved.

(iii) If the hearing officer certifies the admission of an individual to a State Residential Center, the hearing officer shall, at the conclusion of the hearing:

1. write on the certification form any additional services of habilitation that are not included in the evaluation report, but that the hearing officer finds, from the evidence, are needed by the individual; and

2. advise that individual and the legal counsel of:
a. the individual's right to seek judicial release under § 7-605 of this Subtitle;

b. the individual's rights under the appeal provisions of §§ 10-222 and 10-223 of the State Government Article; and

c. the individual's right to file a petition for habeas corpus under § 7-605(a) of this Subtitle.

(d) *Determination of hearing officer.* The determination of a hearing officer on an admission under this Subtitle is a final decision of the Department for the purpose of judicial review of final decisions under Title 10, Subtitle 2 of the State Government Article.

7-603 Scope of Services

(a) *In general.* Each State Residential Center shall provide items and services including but not limited to the following services:

(1) Skilled nursing;

(2) Psychology;

(3) Occupational Therapy;

(4) Physical Therapy;

(5) Habilitation services; and

(6) Support and assistance with activities of daily living

(b) *Respite Services.*

(1) *In general.* Each State Residential Center may also provide Respite services.

(2) *Criteria for respite services.* An individual may receive respite services in a State Residential Center if the individual meets each of the following criteria:

(i) Meet the criteria for State Residential Center admission set forth in § 7-602(a) of this Subtitle; and

(ii) Have a documented need for respite services; and

(iii) Have physical and mental health conditions stable.

7-604 Reevaluations & Person-Centered Plans

(a) *Reevaluation required on an annual basis.*

(1) At least once a year, each individual who is admitted to a State Residential Center shall be reevaluated to determine:

(i) Whether the individual continues to meet the requirements for admission to a State Residential Center as set forth in § 7-602(a);

(ii) Whether the services which the individual requires can be provided in a less restrictive setting;

(iii) Whether the individual's Person-Centered Plan as required by § 7-604(b) is adequate and suitable; and

(iv) Whether the State Residential Center has complied with and executed the individual's Person-Centered Plan in accordance with the rules, regulations, and standards that the Administration adopts.

(2) *Individuals no longer meeting admission requirements.* If the Deputy Secretary or his designee finds that any individual no longer meets the requirements for admission to a State Residential Center as set forth in § 7-602(a), the Deputy Secretary or his designee shall begin appropriate proceedings for release or transfer of that individual in accordance with §§ 7-605 and 7-606 of this Subtitle.

(b) *Person-Centered Plan.*

(1) *Required.* Upon admission, on an annual basis thereafter, and any other time requested by the individual receiving services in a State Residential Center, the Coordinator of Community Services and the Interdisciplinary Team shall meet with the individual and develop a Person-Centered Plan.

(2) *Required Contents.* The Person-Centered Plan shall include information as required in the Administration's regulations.

(3) In developing the written Person-Centered Plan, the Coordinator of Community Services shall report any violation of the individual's rights as provided in Subtitle 8 of this Title.

(4) *Required Reporting*

(i) *By the State Residential Center.* On or before December 1 of each year, each State Residential Center shall provide the information required under paragraph (2) of this subsection to the Administration and the Department of Disabilities.

(ii) *To the General Assembly.* On or before July 1 of each year, the Administration and the Department of Disabilities shall report to the General Assembly, in accordance with § 2-1246 of the State Government Article, summarizing the statewide and regional information provided by the State Residential Centers pursuant to subparagraph (i) of this paragraph.

(iii) *State's Disability Plan.* The data provided under this paragraph (4) shall be incorporated in the State's Disability Plan, with recommendations to address the barriers

to prevent individuals from living in the most integrated setting appropriate to the meet the individual's needs.

(c) The reevaluation and written Person-Centered Plan shall be completed in accordance with § 7-204 of this Title, this section, and the Administration's regulations governing person-centered planning.

7-605 Habeas Corpus & Release

(a) *Habeas corpus.* Any individual who has been admitted to a State Residential Center, or any person on behalf of the individual, may apply at any time to a court of competent jurisdiction for a writ of habeas corpus to determine the cause and the legality of the detention.

(b) *Petition for release.*

(1) *Who may file.* Subject to this limitations in this subsection (b), a petition for the release of an individual who is held under this Subtitle from a State Residential Center may be filed, at any time, by:

- (i) The individual; or
- (ii) Any person who has a legitimate interest in the welfare of the individual.

(2) *Where petition filed.* The petition shall be filed in a circuit court for the county:

- (i) Where the individual resides or resided at the time of the admission; or
- (ii) Where the State Residential Center is located.

(3) *Administration respondent in petition under section.* The Administration shall be the respondent in a petition under this subsection.

(4) *Form and information.* The petition shall be in the form and contain the information that the Maryland Rules require.

(5) *Jury trial.* If the petitioner requests a trial by jury, the trial shall be held with a jury as in a civil action at law.

(6) *Determination of trier of fact.* The trier of fact shall determine whether the individual meets the criteria for State Residential Center admission set forth at § 7-602(a) of this Subtitle.

(7) *Remand to custody of State Residential Center.*

(i) The court shall remand the individual to the custody of the State Residential Center, if the trier of fact determines that the individual meets the criteria for State Residential Center admission set forth at § 7-602(a).

(ii) The court shall order that appropriate less restrictive services be offered to an individual if the trier of fact determines that:

1. The individual has an intellectual disability;
2. For adequate habilitation the individual needs residential services; and
3. There is a less restrictive setting in which the service can be provided, and which from evidence submitted by the Administration is available and will be available to the individual within a reasonable time.

(iii) The court shall order that the individual shall be released from the State Residential Center, if the trier of fact determines that:

1. The individual does not have an intellectual disability;
2. For adequate habilitation the individual does not need residential services; or
3. There is a less restrictive setting in which the needed services can be provided that is available to the individual or will be available to the individual within a reasonable time.

(8) *Appeals.* Any party may appeal from a decision on the petition as in any other civil case.

(9) *Records.* Appropriate records of the proceeding under this section shall be made a permanent part of the individual's record.

(10) *Later petitions.*

(i) After a determination on the merits of a petition under this subsection (b), a court may not hear a later petition for the individual within 1 year after that determination, unless:

(ii) The petition is verified, and alleges an improvement in the condition of the individual with an intellectual disability after the determination; and

(iii) The court, after review of the verified petition, determines that the matter should be reopened.

(iv) If the matter is reopened, the petition shall be heard as provided in this subsection (b).

(c) *Release from State Residential Center.*

(1) *Conditions for Release.* At the direction of the Deputy Secretary, an individual who has been admitted under this Subtitle shall be released from a State Residential Center if:

(i) The individual is not an individual with an intellectual disability;

(ii) The individual is an individual with an intellectual disability but does not need residential services; or

(iii) There is an available, less restrictive kind of service that is consistent with the welfare and safety of the individual.

(2) *Conditional Release.*

(i) At the Direction of the Deputy Secretary, any individual who is admitted under this Subtitle may be released conditionally from a State Residential Center for individuals with an intellectual disability, if, in the judgment of the Deputy Secretary, the individual:

1. Would be cared for properly by the individual or another person; and

2. Would not endanger the individual or the person or property of another.

(ii) The Deputy Secretary may set the conditions for release that the Deputy Secretary considers reasonable. The conditions may relate to:

1. The duration of the release;

2. Treatment during release; or

3. Placement under supervised care in an approved setting.

(iii) An individual with an intellectual disability released conditionally is considered to be held by the State Residential Center from which the individual was released.

(3) *Determination of release made permanent part of record.* Each determination of any release of an individual, whether full or conditional, including a summary of the reasons for the determination, shall be made a permanent part of the individual's record

7-606 Transfer to mental health program

(a) *Requests to Behavioral Health Administration.* The Developmental Disabilities Administration may ask the Behavioral Health Administration to accept primary responsibility for an individual in, or eligible for admission to, a State Residential Center, if the Developmental Disabilities Administration finds that the individual would be provided for more appropriately in a program for individuals with mental disorders.

(b) *Determination.* The Behavioral Health Administration shall determine whether transfer to a mental health program is appropriate.

(c) *Disputes over transfer.* A dispute over a transfer of an individual from the Developmental Disabilities Administration to the Behavioral Health Administration shall be resolved, in accordance with procedures that the Secretary sets, on request of the Developmental Disabilities Administration or the Behavioral Health Administration.

(d) *Hearings.* The Developmental Disabilities Administration shall give the individual with developmental disability the opportunity for a hearing on the proposed transfer under this section.

7-607 Appeal Rights

(a) *Admissions.* If the individual is certified for admission to the State Residential Center, then the individual shall have appeal rights as set forth in § 7-602(d). If the individual's application for admission to the State Residential Center is denied, then the individual shall have a right to a hearing as provided in § 7-206.

(b) *Discharges.* If the individual seeks to be discharged, then the individual shall have the rights set forth in § 7-605. If the individual objects to being discharged, then the individual shall have a right to a hearing as provided in § 7-206.

7-608 Employees as Law Enforcement Officers

The administrative head for each State Residential Center or Court-Involved Residential Center may appoint any employee as a law-enforcement officer and, while the employee holds a special police commission issued by the Governor, the employee may:

- (1) Return an individual with an intellectual disability to the State Residential Center or Court-Involved Residential Center from which the individual has left without approved leave; and
- (2) Be used to protect individuals or property at the State Residential Center or Court-Involved Residential Center.

Part II: Citizens' Advisory Boards

7-609 Citizens' Advisory Boards – Created

- (a) In Part II of this Subtitle, “board” means a citizens' advisory board for a State Residential Center.
- (b) There is a citizens' advisory board for each State Residential Center.

7-610 Citizens' Advisory Boards – Members

- (a) *Membership.*
 - (1) Each board consists of 7 members appointed by the Governor.
 - (2) The board for each State Residential Center shall reflect adequately the composition of the community that the State Residential Center serves.
 - (3) Of the 7 members of the board for a State Residential Center:
 - (i) At least 2 shall be parents or other relatives or guardians of residents of that State Residential Center; and
 - (ii) Each of the others shall be individuals who:
 - 1. Are known for their interest in civic and public affairs; and
 - 2. Have expressed an active interest in the care of individuals with an intellectual disability, or generally in intellectual disability endeavors.
 - (4) The Governor shall appoint the members from a list of qualified individuals submitted to the Governor by the Secretary. The number of names on the list shall be at least twice the number of vacancies.
- (b) *Residency.* Each member of the board for a State Residential Center shall be a resident of the region that the State Residential Center serves.
- (c) *Term.*
 - (1) The term of a member is 4 years.
 - (2) At the end of a term, a member continues to serve until a successor is appointed and qualifies.
 - (3) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.
 - (4) A member who serves 2 consecutive full 4-year terms may not be reappointed for 4 years after the completion of those terms.

7-611 Citizens' Advisory Boards – Officers

- (a) *In general.* From among its members, each board shall elect a chairperson and other officers that the board considers necessary.
- (b) *Elections and terms.* The manner of election of officers and their terms of office shall be as the board determines.

7-612 Citizens' Advisory Boards – Meetings; Compensation

- (a) *Meetings.* Each board shall meet at least 4 times a year, at the times and places that it determines.
- (b) *Compensation.* A member of a board:
 - (1) May not receive compensation; but

(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

7-613 Citizens' Advisory Boards – Regulations for conduct of meetings; reports

(a) *Regulations for conduct of meetings.* Each board may adopt regulations for the conduct of its meetings.

(b) *Duties of board.*

(1) Each board serves in an advisory capacity.

(2) Each board shall:

(i) Submit to the Secretary an annual report on:

1. The needs of individuals with an intellectual disability; and
2. The extent to which its State Residential Center meets these

needs;

(ii) Advise the administrative head of the State Residential Center on its goals, programs, and policies;

(iii) Help in evaluating the degree to which these goals are achieved;

(iv) Review and make recommendations about the annual budget of the State Residential Center;

(v) Assume leadership in developing community understanding of the needs of individuals with an intellectual disability; and

(vi) Carry out any other responsibility that the administrative head of the State Residential Center requests.

Subtitle 7: Court-Involved Residential Center

7-701 Creation and Licensure

(a) *Creation.* There is a Court-Involved Residential Center for individuals with an alleged or diagnosed intellectual disability or developmental disability who have been ordered by a court to be evaluated, confined, or committed to the Department pursuant to Title 3 of the Criminal Procedure Article.

(b) *Licensure.* The Court-Involved Residential Center shall be licensed by the Secretary to provide a continuum of integrated services to the individuals it serves.

(c) *Administrative head.* The Deputy Secretary shall appoint an administrative head for the Court-Involved Residential Center.

7-702 Admission Criteria

The following individuals may be admitted to and receive services from a Court-Involved Residential Center:

(a) an individual ordered by a court to be confined pursuant to §3-106(g)(4)(ii) of the Criminal Procedure Article;

(b) an individual ordered by a court for an evaluation or to be confined pursuant to §§ 3-105 and 3-111 of the Criminal Procedure Article;

(c) an individual committed to the Department for care or treatment pursuant to §§ 3-106(c)(1) and 3-112 of the Criminal Procedure Article, who have been determined to be dangerous to self or others as a result of an alleged or diagnosed intellectual disability or developmental disability;

(d) an individual on conditional release and returned to the Court-Involved Residential Center either voluntarily or on a hospital warrant.

7-703 Adoption of Rules and Regulations

The Department shall adopt rules and regulations governing the licensing, operation, admission requirements, scope of services, and any other requirements for Court-Involved Residential Centers as authorized pursuant to §§ 7-102 and 7-105 of this Title, and consistent with Title 3 of the Criminal Procedure Article.

7-704 Person-Centered Plan

A Person-Centered Plan must be completed for each individual who is admitted to the Court-Involved Residential Center upon admission and annually thereafter.

7-705 Transfer, Discharge, or Release from Commitment

(a) *Transfer.* The Department may transfer an individual from the Court-Involved Residential Center to another Department facility to which the individual qualifies for admission. The Department shall notify the court of the change of the individual's location. Transfers to a Behavioral Health Administration facility shall follow the process set forth in § 7-606.

(b) Eligibility for discharge from commitment or conditional release from commitment shall be in accordance with Title 3 of the Criminal Procedure Article.

(c) Individuals confined pursuant to § 3-106(g)(4)(ii) of the Criminal Procedure Article shall be discharged as set forth in § 7-605(c) of this Title.

Subtitle 8: Individual Rights

7-801 Scope

(a) *In general.* Except as provided in § 7-802, this Subtitle provides for the rights of any individual who receives services under this Title.

(b) *Protection of Rights.* A person may not interfere knowingly with the rights of an individual who is determined eligible to receive services under this Title as provided in §§ 7-803 through 7-805 of this Subtitle.

7-802 Infringement of right to vote or receive, hold, and dispose of property

An individual may not be deprived of the right to vote or to receive, hold, and dispose of property solely because the individual has developmental disability or receives services under this Title.

7-803 Rights of Individuals with a Developmental Disability

(a) It is the policy of this State, that in addition to any other rights in law or equity, each individual who receives services under this Title has the following basic rights:

- (1) The right to be treated with courtesy, respect, and full recognition of human dignity and individuality;
- (2) The right to receive treatment, services, and habilitation services in the most integrated setting that is available, adequate, appropriate, and in compliance with relevant laws and regulations;
- (3) The right to be free from mental and physical abuse, as provided in § 7-807;
- (4) The right to be free from chemical, mechanical and physical restraints, except when necessary for health and safety as documented in the individual's Person-Center Plan in accordance with the Administration's regulations;
- (5) The right to privacy;
- (6) The right to worship as the individual chooses;
- (7) The right to an accounting of any funds of the individual;
- (8) The right to choose how any funds of the individual are spent;
- (9) The right to be informed of all of the most integrated setting service options, including models for delivery of those services;
- (10) The right to choose from among the most integrated setting service options, including models for delivery of those services;
- (11) The right of the individual, or the individual's legal guardian of the person, to receive information from a provider regarding the individual's diagnosis, treatment, and prognosis, in accordance with applicable law and regulation governing privacy of medical records and health information;
- (12) As provided by applicable law and regulation, the right of the individual, or the individual's legal guardian of the person, to:
 - (i) participate in the planning of medical treatment;
 - (ii) consent to or refuse medication or medical treatment; and
 - (iii) be informed of the material consequences of receiving or not receiving the proposed treatment;
- (13) The right to maintain the confidentiality of:
 - (i) all medical records, as provided by applicable law and regulation;and
 - (ii) records and documentation maintained by the Administration with respect to the individual's eligibility and services, as provided by Subtitle 9 of this Title;
- (14) The right of the individual to share a room with his or her spouse who is also a resident of a provider, if it is not medically contraindicated;
- (15) The right to reasonable and private access to telephone, writing instruments, stationary, postage, electronic mail, or other instruments as available to communicate with others;
- (16) The right to receive visits, in privacy, from any person of the individual's choosing;
- (17) The right to possess and use clothing and other personal effects;

(18) The right to work; and
(19) The right to present any grievance or potential violation of this section or § 7-804, as provided by § 7-805 of this Subtitle.

(b) The rights provided under subsection (a) of this section may be restricted if conditions, specified in the Administration's regulations, are met and documented in the individual's Person-Centered Plan.

7-804 Distribution of Rights to Individuals with a Developmental Disability

(a) *In general.* Each individual who receives services under this Title, and his or her legal guardian of the person, is entitled to receive a copy of his or her rights, and the process for reporting potential violations of those rights, as provided under this Subtitle.

(b) *Contents of Notice of Rights.* The notice of rights to be distributed in accordance with this § 7-804 must contain the following information:

(1) A summary of all rights as provided under this Subtitle; and
(2) Instructions on submitting a complaint or reporting violation as provided in this Subtitle.

(c) *Failure to distribute.* Failure to distribute a notice of rights required under this § 7-804 shall constitute a violation of rights under § 7-801(b).

7-805 Complaint and Investigation of Violation of Rights

The Administration shall adopt rules and regulations for receiving and investigating complaints alleging a violation of rights under this Subtitle 8.

7-806 Sanctions for Violation of Rights

(a) *Penalty.* A person who violates § 7-801(b) is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$5,000, or imprisonment not exceeding 2 years, or both.

(b) *Provider sanctions.* In addition, a provider may be sanctioned for violation of rights provided under this Subtitle 8 as set forth in Subtitle 4 of this Title.

7-807 Abuse and Neglect

(a) *In general.* In addition to any other reporting requirement required by law, a person who believes that an individual with developmental disability has been abused or neglected promptly shall report the alleged abuse or neglect in accordance with this section.

(b) *Definitions.* For purposes of this section, the following terms shall have the following meanings:

(1) *Abuse defined.*

(i) In this section, "abuse" shall have the same meaning as set forth in § 5-701 of the Family Law Article for minors, § 14-101 of the Family Law Article, and Title 3, Subtitle 6 of the Criminal Law Article.

(ii) In this section, "abuse" does not include:

orders;

1. The performance of:
 - A. An accepted medical procedure that a physician

- B. An accepted behavioral procedure that a licensed psychologist or psychiatrist, as appropriate, orders in accordance with the Administration's regulations on development and implementation of a Behavior Plan; or

2. An action taken by an employee or contracted staff that complies with applicable State and federal laws and applicable Department policies on the use of physical intervention

- (2) *Neglect defined.* In this section, "neglect" shall have the same meaning as set forth in § 5-701 of the Family Law Article for minors, § 14-101 of the Family Law Article for adults, and Title 3, Subtitle 6 of the Criminal Law Article.

- (c) *Construction.* Nothing in this section shall be construed to amend these provisions of the Family Law Article, Health-General Article, Health Occupations Article, or Criminal Law Article.

- (d) *Persons required to report abuse or neglect.* The following persons are required to report an allegation of abuse or neglect pursuant to this section:

- (1) The individual's legal guardian;
 - (2) A provider;
 - (3) Employee or contracted staff of a provider;
 - (4) Coordinator of Community Services;
 - (5) Support Broker;
 - (6) Direct Support Professional; and
 - (7) Administration staff.

- (e) *Report of abuse or neglect.* The Department shall adopt rules and regulations for reporting allegations of abuse and neglect to the Department and other appropriate agencies.

- (f) *Investigation of alleged abuse or neglect.* The Department shall adopt rules and regulations governing investigation of allegations of abuse and neglect by the Department and other appropriate agencies, including law enforcement agencies.

- (g) *Central registry of abuse and neglect reports.* The Administration shall maintain a central registry of abuse and neglect reports and their disposition and shall take appropriate remedial action.

- (h) *Immunity from liability.* A person shall have immunity from liability described under § 5-625 of the Courts and Judicial Proceedings Article for:

- (1) Making a report under this section;
 - (2) Participating in an investigation arising out of a report under this section; or Participating in a judicial proceeding arising out of a report under this section.

Subtitle 9: Confidentiality of Records

7-901 Records – Duty to keep complete records

(a) *Definition of record.* For purposes of this Subtitle, “record” means any document, report, statement, note or other information, whether in electronic or paper form, pertaining to the diagnosis, evaluation, treatment, or services of an individual with a developmental disability.

(b) *Required; contents.*

(1) Each provider and Facility shall complete records for each individual who is served by the provider or Facility under this Title.

(2) The record shall contain all of the information that is required by this Title or the Administration.

(c) *Security; availability for inspection.* A licensed or certified provider and Facility shall keep records in a secure area and available for the inspection by any person with the right of access to the records under this Title.

7-902 Records – Advice to Individuals seeking disclosure

Within 14 calendar days after an individual with developmental disability asks a provider or Facility for information about its records on that individual, the provider or Facility shall advise the individual, in writing, about the records and the procedures for their disclosure.

7-903 Records – Permitted disclosure of records

(a) *Consent.* Except as otherwise expressly provided in this section, a provider or Facility may not disclose any record that the provider or Facility keeps on an individual who has been served by the provider or Facility, unless the individual gives written, informed consent to the disclosure.

(b) *In general.*

(1) Subject to the limitations of this subsection, a provider or Facility shall disclose a record of an individual who is served by a provider or Facility to:

(i) The individual with developmental disability, if:

1. A person is not authorized to act on behalf of the individual with developmental disability; and
2. The executive officer or administrative head of the provider or Facility determines that disclosure would not be detrimental to the individual with developmental disability;

(ii) A parent or guardian of the person with developmental disability who is:

1. A minor; or
2. Unless the individual with developmental disability asks that disclosure to the parent or guardian not be allowed, an adult;

(iii) A lawyer or other individual who is authorized:

1. By the individual with developmental disability; or
2. By another individual to whom, on behalf of the individual with developmental disability, disclosure of the record is authorized; or

(iv) To the executive director or a designee of the executive director of the State-designated protection and advocacy agency, if the disclosure is required under applicable federal regulations.

(2) A provider or Facility shall comply within 14 days after an individual with developmental disability or a person who is authorized to act on behalf of that individual, asks in writing:

- (i) To receive a copy of a record; or
- (ii) To see and copy the record disclosed.

(c) *Refusal to disclose record.* If a provider or Facility refuses to disclose a record under subsection (b)(1)(i) of this section, the executive officer or administrative head of a provider or Facility shall apply, within 10 working days after the refusal, to the circuit court for the county where the individual making the request resides or where the site of services to the individual occurred for an order to permit the executive officer or administrative head of the provider or Facility to continue to refuse disclosure to the individual with developmental disability.

(d) *Parties seeking disclosure.* A provider or Facility shall disclose a record that is sought:

- (1) By the staff of the provider or Facility to carry out a purpose for which the record is kept;
- (2) By any other person who provides or coordinates services in accordance with the individual's Person-Centered Plan;
- (3) By the Deputy Secretary or a designee of the Deputy Secretary; and
- (4) By a person to further the purposes of:
 - (i) A medical review committee;
 - (ii) An accreditation board or commission;
 - (iii) A licensing agency that is authorized by statute to review records;
 - (iv) A court order;
 - (v) A representative of the Division of Reimbursement of the Department;
 - (vi) An auditor of the Department;
 - (vii) An auditor of the Office of Legislative Audits of the Department of Legislative Services; or
 - (viii) The Clients' Rights Committee of the licensed or certified provider or Facility unless the individual with developmental disability objects.

(e) *Fees.*

- (1) A provider or Facility may require a person who asks for a copy of a record to pay a reasonable fee.
- (2) The fee may not exceed the cost of copying the record.

(f) *Information required for disclosures.*

- (1) Except for a disclosure that is made to the staff for its routine use under subsection (d)(1) of this section, a provider or Facility shall keep a list of all disclosures of a record.
- (2) The list shall state:
 - (i) The date, nature, and purpose of each disclosure; and
 - (ii) The name and address of each person to whom the disclosure is made.

7-904 Request to Change Record

- (a) *In general.* An individual with developmental disability or person who is authorized to act on behalf of the individual may:
- (1) Contest a record that the provider or Facility keeps on the individual;
 - (2) Ask for an addition to or other change in the record; and
 - (3) Contest disclosure of the record.
- (b) *Receipt of request to change record.* Within 14 days after a provider or Facility receives a request to change a record, the provider or Facility shall acknowledge receipt of the request.
- (c) *Receipt of request.*
- (1) Within 14 days after a provider or Facility acknowledges receipt of the request, the provider or Facility shall:
 - (i) Make or refuse to make the requested change; and
 - (ii) Give the person who requested the change written notice of the provider or Facility's action.
 - (2) A notice of refusal shall contain:
 - (i) Each reason for the refusal; and
 - (ii) Any procedures that the Deputy Secretary has set for review of the refusal.
- (d) *Right of review.*
- (1) An individual with developmental disability or person who is authorized to act on behalf of the individual may ask the Deputy Secretary to review the refusal.
 - (2) Within 45 days after the request for review, the Deputy Secretary shall:
 - (i) Complete the review;
 - (ii) Make a final determination; and
 - (iii) Give the individual with developmental disability or person who is authorized to act on behalf of the individual written notice of the final determination.
- (e) *Refusal to change record.* If the final determination of the Deputy Secretary is a refusal to change a record, the written notice shall include:
- (1) Each reason for the refusal;
 - (2) The procedure for inserting in the record a concise statement of the reason that the individual with developmental disability or person who is authorized to act on behalf of the individual disagrees with that refusal; and
 - (3) Information on the right to seek judicial review of the decision of the Deputy Secretary.

7-905 Unlawful disclosure of records by custodians

- (a) *"Custodian" defined.* In this section, "custodian" means:
- (1) Executive officer or administrative head of a provider or a Facility;
 - (2) An individual who is responsible for the area where records on individuals who are served by a provider or a Facility are kept; or
 - (3) Any individual who has or controls the record.
- (b) *Liability for unlawful disclosure.* In addition to any damages recoverable in a court of general jurisdiction, a custodian of a record who discloses the record in violation of

Subtitle 9 of this Title is liable to the individual whose records are disclosed unlawfully for punitive damages in an amount that does not exceed \$5,000 plus reasonable attorney's fees.

Subtitle 10: Prince George's County – Adults with Developmental Disabilities Citizen's Advisory Committee

7-1001 Adults with Developmental Disabilities Citizen's Advisory Committee

(a) *Advisory Committee defined.* - In this section, "Advisory Committee" means the Adults with Developmental Disabilities Citizen's Advisory Committee.

(b) *In general.* - There is an Adults with Developmental Disabilities Citizen's Advisory Committee in Prince George's County.

(c) *Purposes of committee.* - The purposes of the Advisory Committee are to:

(1) Provide the Secretary, the Director, the Director of the Southern Maryland Regional Administration, the Director of the Southern Maryland Regional Division of Rehabilitation Services, and groups in the local community with information regarding the needs of adults with developmental disabilities who reside in Prince George's County;

(2) Advocate for positive systems change related to the services provided to adults with developmental disabilities;

(3) Advocate for a family-friendly relationship with the Administration, the Maryland State Department of Education Division of Rehabilitation Services, and other State and local organizations;

(4) Provide a forum for information sharing and support among adults with developmental disabilities and their families;

(5) Advocate for best practices in providing services to adults with developmental disabilities; and

(6) Seek input from individuals with developmental disabilities, advocates, family members, community partners, service providers, educators, and administrators on local issues related to:

(i) Employment, services, and continuing education for adults with developmental disabilities; and

(ii) The inclusion of adults with developmental disabilities in the community.

(d) *Committee members.* - The Advisory Committee consists of the following members:

(1) The Director of the Southern Maryland Regional Administration;

(2) The Director of the Southern Maryland Regional Division of Rehabilitation Services;

(3) One representative from the Prince George's County Department of Family Services;

(4) Parents and family members of individuals with developmental disabilities;

(5) Individuals with developmental disabilities;

(6) Representatives from Administration service providers; and

(7) Representatives from other interested groups, including local colleges, disability advocates, transportation providers, literacy organizations, and recreation groups.

(e) *Officers.* - The Advisory Committee shall elect officers from among its members.

(f) *Notice of meetings.* - The regional Administration office shall assist the Advisory Committee in notifying providers and consumers of Administration services of meetings of the Advisory Committee.

(g) *Compensation.* A member of the Advisory Committee may not receive compensation as a member of the Advisory Committee.

(h) *Frequency and participants of meetings.*

(1) The Advisory Committee shall meet at least once each month.

(2) Representatives from the Advisory Committee shall meet with:

(i) The Director of the Southern Maryland Regional Administration and the Director of the Southern Maryland Regional Division of Rehabilitation Services at least four times a year; and

(ii) The Secretary and the Director annually.

(i) *Duties of committee.* - The Advisory Committee shall:

(1) Provide advice and make recommendations to the Director of the Southern Maryland Regional Administration, the Director of the Southern Maryland Regional Division of Rehabilitation Services, and groups in the local community on the needs of adults with developmental disabilities in Prince George's County;

(2) Provide a forum for input from the residents of Prince George's County on issues related to adults with developmental disabilities; and

(3) Perform any other duty considered appropriate by the Advisory Committee.

Subtitle 11: Short Title

7-1101 Short Title

This Title may be cited as the “Maryland Developmental Disabilities Law.”