

HOUSE BILL 127

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7lr0017

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

Introduced and read first time: January 18, 2017

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Department of Health and Mental Hygiene – Board of Review – Repeal**

3 FOR the purpose of repealing provisions of law establishing and relating to the Board of
4 Review of the Department of Health and Mental Hygiene; repealing provisions of
5 law that require the Board of Review to make certain recommendations to the
6 Secretary of Health and Mental Hygiene, advise the Secretary on certain matters,
7 hear and determine certain appeals, and report at certain intervals to the Secretary;
8 repealing provisions of law that authorize a person to file an appeal with the Board
9 of Review under certain circumstances; repealing certain definitions; making certain
10 conforming changes; prohibiting the Board of Review from accepting certain cases
11 for administrative review on and after a certain date; providing for a delayed
12 effective date for certain provisions of this Act; and generally relating to the Board
13 of Review of the Department of Health and Mental Hygiene.

14 BY repealing and reenacting, without amendments,
15 Article – Health – General
16 Section 2–104(a)
17 Annotated Code of Maryland
18 (2015 Replacement Volume and 2016 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Health – General
21 Section 2–104(b), 7–504, 7–801, 10–633, 10–807, 15–108(f), 19–128(c), 19–227(a),
22 19–325(d), 19–345.1(d), 21–317(a), and 21–419(e)
23 Annotated Code of Maryland
24 (2015 Replacement Volume and 2016 Supplement)

25 BY repealing
26 Article – Health – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 2–201 through 2–207 and the subtitle “Subtitle 2. Board of Review of Department”
Annotated Code of Maryland
(2015 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 1–101, 12–601(b), 14–5A–17.1(a), 14–5B–14.1(a), 14–5D–15(b),
14–5E–17(a), and 15–315(b)
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

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

Article – Health – General

2–104.

(a) The Secretary is responsible for the budget of the office of the Secretary and for the budget of each unit in the Department.

(b) (1) The Secretary may adopt rules and regulations to carry out the provisions of law that are within the jurisdiction of the Secretary.

(2) (i) The Secretary shall adopt regulations, in consultation and cooperation with local governing bodies, to govern the siting of community residences for special populations funded by the Department, the Department of Housing and Community Development, the Department of Human Resources, and the Department of Juvenile Services.

(ii) Any regulations adopted shall comply with the federal Fair Housing Amendment Act of 1988.

(iii) Prior to the adoption of any regulations proposed under this paragraph, the Secretary shall conduct a public hearing for the sole purpose of allowing all the governing bodies of each county and municipality the opportunity to review and comment on the proposed regulations.

(3) The Secretary shall review and may revise the rules and regulations of:

(i) [The Board of Review of the Department;

(ii)] Each unit in the Department that is authorized by law to adopt rules and regulations; and

[(iii)] (II) The Department.

1 [Subtitle 2. Board of Review of Department.]

2 [2-201.

3 In this subtitle, "Board" means the Board of Review of the Department.]

4 [2-202.

5 There is a Board of Review of the Department.]

6 [2-203.

7 (a) (1) The Board consists of 7 members appointed by the Governor with the
8 advice and consent of the Senate.

9 (2) Of the 7 members:

10 (i) At least 4 shall be from the general public; and

11 (ii) Each of the others shall have knowledge and experience in at
12 least one of the fields under the jurisdiction of the Department.

13 (b) (1) The term of a member is 3 years.

14 (2) The terms of members are staggered as required by the terms provided
15 for members of the Board on July 1, 1982. The terms of those members end as follows:

16 (i) 2 in 1983;

17 (ii) 3 in 1984; and

18 (iii) 2 in 1985.

19 (3) At the end of a term, a member continues to serve until a successor is
20 appointed and qualifies.

21 (4) A member who is appointed after a term has begun serves only for the
22 rest of the term and until a successor is appointed and qualifies.

23 (c) On recommendation of the Secretary or a majority of the Board, the Governor
24 may remove a member of the Board for any of the following reasons:

25 (1) Conviction of any crime that involves moral turpitude.

(2) Conviction of any criminal offense the effect of which is to prevent or interfere with the performance of any duty of the Board.

(3) Failure regularly to attend meetings of the Board.

(4) Failure to carry out duties assigned by the Board or its chairman.

(5) Acceptance of any position or the conduct of any business that conflicts or tends to conflict with the performance of any duty of the Board.]

[2-204.

From among the Board members from the general public, the Governor shall designate a chairman.]

[2-205.

(a) The Board shall determine the times and places of its meetings.

(b) Each member of the Board is entitled to:

(1) Compensation in accordance with the State budget; and

(2) Reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(c) The Board may employ a staff in accordance with the State budget.]

[2-206.

(a) The Board shall make recommendations to the Secretary on the operation and administration of the Department as the Board considers necessary or desirable.

(b) If an advisory board for the Department is not created, the Board shall advise the Secretary on all matters affecting the Department that the Secretary submits to the Board for its consideration.

(c) (1) Except as provided in paragraph (2) of this subsection, the Board shall hear and determine any appeal from a decision of the Secretary in a contested case concerning an individual's eligibility for or participation in the Maryland Medical Assistance Program, including home- and community-based waiver services programs and other demonstration waiver programs.

(2) Maryland Medical Assistance Program eligibility decisions made under delegation by the Secretary to the Maryland Health Benefit Exchange are not subject to review by the Board.

1 (d) The Board shall report at least annually to the Secretary. Its report shall
2 include a summary by categories of appeals heard and determinations made.

3 (e) A Board member may not vote or otherwise participate in the Board's
4 consideration of any matter in which the member has a direct or indirect private interest.]

5 [2-207.

6 (a) If any person is aggrieved by a decision of the Secretary that is subject to
7 review by the Board under § 2-206(c)(1) of this subtitle, that person is entitled to appeal as
8 provided in this section.

9 (b) Any appeal authorized by this subtitle must be filed with the Board within 30
10 days after the date of the decision from which the appeal is being taken.

11 (c) (1) The Board shall adopt procedural rules and regulations as provided in
12 the Administrative Procedure Act and in all respects shall be governed by that Act. At least
13 3 members shall sit at each hearing of the Board when it sits as a board of appeal. Decisions
14 shall be by a majority of the members sitting, shall be in writing, and shall state the Board's
15 reasons. The Board shall keep minutes of its proceedings.

16 (2) A decision of the Board is a final agency decision for purposes of judicial
17 review under the Administrative Procedure Act.

18 (3) A party aggrieved by a decision of the Secretary need not exhaust the
19 administrative remedy before the Board as provided in this section and may petition for
20 judicial review of the Secretary's decision as a final agency decision under the
21 Administrative Procedure Act.

22 (4) If the Board does not issue a decision within 180 days after submission
23 of the notice of appeal, the decision of the Secretary shall be considered affirmed.

24 (d) (1) As to any issue for which the taking of evidence is authorized, the
25 chairman or the acting chairman may administer oaths and issue subpoenas and orders for
26 the attendance of witnesses and the production of evidence.

27 (2) If a person fails to comply with a lawful order or subpoena issued under
28 this subsection, on the petition of the chairman or acting chairman, a court of competent
29 jurisdiction may compel obedience to the order or subpoena or compel testimony or the
30 production of evidence.

31 (e) (1) Any party may seek an appeal from a decision of the Board.

32 (2) Appeals from a decision of the Board shall be governed by the
33 Administrative Procedure Act.]

1 7-504.

2 [(a) The Board of Review of the Department does not have jurisdiction to review
3 the determination of a hearing officer on an admission under this subtitle.

4 (b)] The determination of [the] A hearing officer **ON AN ADMISSION UNDER THIS**
5 **SUBTITLE** is a final decision of the Department for the purpose of judicial review of final
6 decisions under Title 10, Subtitle 2 of the State Government Article.

7 7-801.

8 (a) The Deputy Secretary may transfer an individual with developmental
9 disability from a public residential program or a public day program to another public
10 residential program or public day program or, if a private provider of services agrees, to
11 that private program, if the Deputy Secretary finds that:

12 (1) The individual with developmental disability either can receive better
13 treatment in, or would be more likely to benefit from treatment at the other program; or

14 (2) The safety or welfare of other individuals with developmental disability
15 would be furthered.

16 (b) The Deputy Secretary may transfer any individual with developmental
17 disability who is a resident of another state to a residential facility in that state if the
18 Deputy Secretary finds that the transfer is feasible.

19 (c) (1) Any finding that the Deputy Secretary makes under subsection (a) or
20 (b) of this section shall be in writing and filed with the record of the individual with
21 developmental disability.

22 (2) A copy of the finding and the notice to the private provider of services
23 or program to which the individual with developmental disability is being transferred shall
24 be sent to the proponent of admission, guardian of the person, next of kin, and counsel of
25 the individual with developmental disability.

26 (3) The Deputy Secretary shall give the individual with developmental
27 disability the opportunity for a hearing on the proposed transfer under this section. A
28 transfer may not take place until a decision is issued as a result of the hearing.

29 (4) [The Board of Review of the Department does not have jurisdiction to
30 review the determination of an administrative law judge made pursuant to a hearing under
31 this subtitle.

32 (5)] The determination of [the] AN administrative law judge **AS A RESULT**
33 **OF A HEARING UNDER THIS SECTION** 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.

10–633.

[(a) The Board of Review does not have jurisdiction to review the determination of a hearing officer on an involuntary admission under this subtitle.

(b)] The determination of [the] A hearing officer **ON AN INVOLUNTARY ADMISSION UNDER THIS SUBTITLE** is a final decision of the Department for the purpose of judicial review of a final decision under the Administrative Procedure Act.

10–807.

(a) In this section, “public facility” means a facility under § 10–406 of this title maintained under the direction of the Administration.

(b) The Director may transfer an individual, who is admitted under Subtitle 6 of this title or committed under Title 3 of the Criminal Procedure Article, from a public facility to the Clifton T. Perkins Hospital Center, if the Director finds that:

(1) The individual either can receive better care or treatment in or would be more likely to benefit from care or treatment at the Clifton T. Perkins Hospital Center; or

(2) The safety or welfare of other individuals would be furthered.

(c) (1) Prior to transferring an individual from a public facility to the Clifton T. Perkins Hospital Center, the Director shall give the individual notice and an opportunity for a hearing before the Office of Administrative Hearings, unless the Director finds that an emergency requires the immediate transfer of the individual.

(2) If the Director determines that an emergency requires the immediate transfer of an individual, the individual may be transferred to the Clifton T. Perkins Hospital Center if the Administration:

(i) Provides notice to the individual; and

(ii) Schedules a post transfer hearing before the Office of Administrative Hearings within 10 calendar days after the transfer.

(3) A hearing requested by an individual under paragraph (1) of this subsection shall be convened at the public facility within 30 calendar days after the individual received notice of the transfer.

(d) If a hearing is requested by the individual in accordance with subsection (c)(1) of this section, the hearing shall be utilized to determine whether the Administration has

demonstrated by preponderance of the evidence that the criteria for transfer have been met.

(e) A decision of an administrative law judge under this section shall be the final decision of the Department for the purpose of judicial review of final decisions under Title 10, Subtitle 2 of the State Government Article.

[(f)] The Board of Review of the Department does not have jurisdiction to review the determination of an administrative law judge that is made under this section.

[(g)] (F) The Director may transfer any individual who is a resident of another state to a facility in that state if the Director finds that the transfer is feasible.

[(h)] (G) (1) Any finding that the Director makes under this section shall be in writing and filed with the records of the individual involved.

(2) A copy of the finding and the notice to the facility to which the individual is being transferred shall be sent to the guardian or other legal representative of the individual.

[(i)] (H) The Director may transfer an individual between public facilities, other than the Clifton T. Perkins Hospital Center, without the consent of the individual if the Director finds that administrative or clinical reasons require a transfer of the individual from the facility.

[(j)] (I) (1) In effecting a transfer of an individual from a unit in a public facility to another unit in the facility or to another public facility, the transferring facility shall provide for the transfer of all the records necessary for continuing the care of the individual on or before the date of transfer to the facility to which the individual is being transferred.

(2) This subsection is not intended to preempt the requirements of § 10–625 of this title.

[(k)] (J) An individual may not be transported to or from any facility unless accompanied by:

(1) An ambulance attendant or other individual who is authorized by the facility and is of the same sex. However, the chief executive officer of the facility or that officer's designee may designate an ambulance attendant or other person of either sex to provide transportation to an individual, if deemed appropriate; or

(2) The parent, spouse, domestic partner, adult sibling, or adult offspring of the individual.

15–108.

(f) (1) The Department or any facility aggrieved by a reimbursement decision of the board under this section [may not appeal to the Board of Review but] may take a direct judicial appeal.

(2) The appeal shall be made as provided for judicial review of final decisions in the Administrative Procedure Act.

19–128.

(c) An aggrieved party [may not appeal a final decision of the Commission to the board of review but] may take a direct judicial appeal within 30 days of the final decision of the Commission.

19–227.

(a) (1) Any person aggrieved by a final decision of the Commission under this subtitle [may not appeal to the Board of Review but] may take a direct judicial appeal.

(2) The appeal shall be made as provided for judicial review of final decisions in the Administrative Procedure Act.

19–325.

(d) Any person who is aggrieved by a final decision of the Secretary under this section [may not appeal to the Board of Review, but] may take a direct judicial appeal.

19–345.1.

(d) (1) (i) In accordance with regulations adopted by the Secretary, the facility shall provide the resident with an opportunity for a hearing on the proposed transfer or discharge.

(ii) The regulations adopted by the Secretary may provide for the establishment of an escrow account when:

1. The basis for the discharge is nonpayment; and
2. The resident continues to reside in the facility while the appeal is pending.

(2) Except as otherwise provided in this subsection, hearings on proposed transfers or discharges shall be conducted in accordance with the provisions of Title 10, Subtitle 2 of the State Government Article and the Medicaid Fair Hearing Procedures.

(3) Any hearing on a proposed discharge or transfer of a resident:

(i) Is not a contested case as defined in § 10–202 of the State Government Article; and

(ii) May not include the Secretary as a party.

(4) A decision by an administrative law judge on a proposed discharge or transfer of a resident:

(i) Is not a decision of the Secretary;

(ii) Unless appealed, is final and binding on the parties; **AND**

(iii) [Is not reviewable by the Board of Review of the Department; and

(iv)] May be appealed in accordance with § 10–222 of the State Government Article as if it were a contested case but the appeal does not automatically stay the decision of the administrative law judge.

21–317.

(a) Any person aggrieved by a final decision of the Department in denying, suspending, or revoking a license issued under this subtitle [may not appeal to the Board of Review, but] may take a direct judicial appeal.

21–419.

(e) A person aggrieved by a final decision of the Secretary in a contested case, as defined by the Administrative Procedure Act, [may not appeal to the Board of Review but] may take a direct judicial appeal.

Article – Health Occupations

1–101.

(a) In this article the following words have the meanings indicated.

[(b) “Board of Review” means the Board of Review of the Department.]

[(c)] **(B)** “County” means a county of this State and, unless expressly provided otherwise, Baltimore City.

[(d)] **(C)** “Department” means the Department of Health and Mental Hygiene.

[(e)] **(D)** “Household member” means someone who is:

(1) The individual’s:

(i) Spouse;

(ii) Son;

(iii) Daughter;

(iv) Ward; or

(v) Parent; or

(2) The individual's relative:

(i) Who shares the individual's legal residence; or

(ii) Whose financial affairs are under the legal or actual control of the individual.

[(f)] (E) "Includes" or "including" means includes or including by way of illustration and not by way of limitation.

[(g)] (F) "Oral competency" means general English-speaking proficiency as evidenced by achievement of a passing score obtained on a Board approved standardized test.

[(h)] (G) "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

[(i)] (H) "Physician" means, except in Title 14 of this article, an individual who is authorized by a law of this State to practice medicine in this State.

[(j)] (I) "Secretary" means the Secretary of Health and Mental Hygiene.

[(k)] (J) "State" means:

(1) A state, possession, or territory of the United States;

(2) The District of Columbia; or

(3) The Commonwealth of Puerto Rico.

[(l)] (K) "Substantial financial interest" means:

(1) An asset with a fair market value of \$1,000 or more; or

(2) A source of income of \$500 or more in a calendar year.

12-601.

(b) A person aggrieved by a final action of the Board under this subtitle or Subtitle 6C of this title [may not appeal to the Secretary or the Board of Review but] may appeal as provided under Title 10, Subtitle 2 of the State Government Article.

14-5A-17.1.

(a) (1) Any person aggrieved by a final decision of the Board or a disciplinary panel under this subtitle [may not appeal to the Secretary or Board of Review but] may take a direct judicial appeal.

(2) The appeal shall be made as provided for judicial review of final decisions in the Administrative Procedure Act.

14-5B-14.1.

(a) (1) Any person aggrieved by a final decision of the Board or a disciplinary panel under this subtitle [may not appeal to the Secretary or Board of Review but] may take a direct judicial appeal.

(2) The appeal shall be made as provided for judicial review of final decisions in the Administrative Procedure Act.

14-5D-15.

(b) (1) Any person aggrieved by a final decision of the Board or a disciplinary panel under this subtitle [may not appeal to the Secretary or Board of Review but] may take a direct judicial appeal.

(2) The appeal shall be made as provided for judicial review of final decisions in the Administrative Procedure Act.

14-5E-17.

(a) (1) Any person aggrieved by a final decision of the Board under this subtitle [may not appeal to the Secretary or Board of Review but] may take a direct judicial appeal.

(2) The appeal shall be made as provided for judicial review of final decisions in Title 10, Subtitle 2 of the State Government Article.

15-315.

1 (b) (1) Any licensee who is aggrieved by a final decision of the Board or a
2 disciplinary panel under this subtitle [may not appeal to the Board of Review but] may
3 take a direct judicial appeal.

4 (2) The appeal shall be as provided for judicial review of the final decision
5 in Title 10, Subtitle 2 of the State Government Article.

6 SECTION 2. AND BE IT FURTHER ENACTED, That the Board of Review within
7 the Department of Health and Mental Hygiene may not accept any additional cases from
8 decisions of the Secretary of Health and Mental Hygiene for administrative review on and
9 after June 1, 2017.

10 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take
11 effect January 1, 2018.

12 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section
13 3 of this Act, this Act shall take effect June 1, 2017.