Chapter 413

(House Bill 590)

AN ACT concerning

Maryland Medical Assistance Program – Waivers – Consolidation and Repeal

FOR the purpose of repealing the Living at Home Waiver Program; altering the requirements for applicants, financial eligibility criteria, and services to be included in the home– and community–based services waiver in the Department of Health and Mental Hygiene (DHMH); repealing the requirement that DHMH work with the Maryland Health Care Commission to convert a certain percentage of nursing facility beds to assisted living program waiver beds; repealing the requirement that certain waiver services be jointly administered by DHMH and the Department of Aging; repealing a requirement that DHMH adopt certain regulations within a certain time period; repealing certain obsolete language; repealing and altering certain definitions; and generally relating to home– and community–based services waivers under the Maryland Medical Assistance Program.

BY repealing
Article – Health – General
Section 15–801 through 15–809 and the subtitle "Subtitle 8. Living at Home Waiver Program"
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 15–132
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 15–801 through 15–809 and the subtitle "Subtitle 8. Living at Home Waiver Program" of Article – Health – General of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Health – General

15–132.

(a) (1) In this section the following terms have the meanings indicated.

(2) "Assisted living program" has the meaning stated in § 19–1801 of this article.

(3) "Assisted living services" means services provided by an assisted living program as defined in regulations adopted by the Department.

(4) "Case management services" means services that assist waiver eligible individuals in gaining access to needed waiver services and other needed medical, social, housing, and other supportive services.

[(5) "Dual eligibility" means simultaneous eligibility for health insurance coverage under both the Program and Medicare and for which the Department may obtain federal matching funds.

(6) "Environmental modifications" has the meaning stated in regulations adopted by the Department and includes those physical adaptations to the home or residence which are necessary to ensure the health, welfare, and safety of the individual or which enable the individual to function with greater independence and without which, the individual would require admission to or continued stay in a nursing facility.

(7)**] (5)** "Health related care and services"**[**, for purposes of paragraph (9) of this subsection,**]** includes:

(i) 24–hour supervision and observation by a licensed care provider;

(ii) Medication administration;

(iii) Inhalation therapy;

(iv) Bladder and catheter management;

(v) Assistance with suctioning; or

(vi) Assistance with treatment of skin disorders and dressings.

[(8)**] (6)** "Home health care services" means those services defined in § 19–401 of this article and in 42 C.F.R. 440.70.

[(9) "Intermediate level of care", for purposes of paragraph (11)(ii) of this subsection, includes health related care and services provided to individuals who

do not require hospital or a skilled level of nursing facility care but whose mental, physical, functional, or cognitive condition requires health services that:

(i) Are above the level of room and board;

(ii) Are provided on a regular basis at least 5 days in a 7–day period; and

(iii) Can be made available to the individuals through institutional facilities.**]**

[(10)**] (7)** "Medically and functionally impaired" means an individual who is assessed by the Department to require services provided by a nursing facility as defined in this section, and who, but for the receipt of these services, would require admission to a nursing facility within 30 days.

[(11)**] (8) [**(i)**]** "Nursing facility" means a facility that provides skilled nursing care and related services, rehabilitation services, and health related care and services above the level of room and board needed on a regular basis in accordance with § 1919 of the federal Social Security Act.

[(ii) "Nursing facility" includes a facility that provides services to individuals certified as requiring an intermediate level of care.

(12) "Personal care services" means those services as defined in accordance with 42 C.F.R. 440.167 and in regulations adopted by the Department.

(13) "Respite care services" has the meaning stated in regulations adopted by the Department and includes those services provided to individuals unable to care for themselves furnished on a short–term basis because of the absence or need for relief of those persons normally providing the care.

(14)**] (9)** "Waiver" means a **[**home and community based**]** **HOME– AND COMMUNITY–BASED** services waiver under § 1915(c) of the federal Social Security Act, submitted by the Department to the Centers for Medicare and Medicaid Services**[**, as required by subsections (b) and (d) of this section**]**.

[(15)**] (10)** "Waiver services" means the services covered under an approved waiver that:

(i) Are needed and chosen by an eligible waiver participant as an alternative to admission to or continued stay in a nursing facility;

(ii) Are part of a plan of **[**care**]** **SERVICE** approved by the program;

(iii) Assure the waiver participant's health and safety in the community; and

(iv) Cost no more per capita to receive services in the community than in a nursing facility.

[(b) On or before August 1, 1999, the Department shall apply to the Health Care Financing Administration of the United States Department of Health and Human Services for an amendment to the existing home and community based services waiver (Control Number 0265.90) under § 1915(c) of the federal Social Security Act to receive federal matching funds for waiver services received by eligible medically and functionally impaired individuals participating in the waiver.**]**

[(c)**] (B)** (1) If permitted by the Centers for Medicare and Medicaid Services, an individual shall be determined medically eligible to receive services **[**under the waiver under subsection (b) of this section**]** if the individual requires:

(i) Skilled nursing **[**facility**]** care or other related services;

(ii) Rehabilitation services; or

(iii) Health–related services above the level of room and board that are available only through nursing facilities, including individuals who because of severe cognitive impairments or other conditions:

1. A. Are currently unable to perform at least two activities of daily living without hands–on assistance or standby assistance from another individual; and

B. Have been or will be unable to perform at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity; or

2. Need substantial supervision for protection against threats to health and safety due to severe cognitive impairment.

(2) The Department shall adopt regulations to carry out the provisions of this subsection.

[(d)**] (C)** The Department's waiver **[**application**]** shall include the following:

(1) An initial cap on waiver participation at 7,500 individuals;

(2) A limit on annual waiver participation based on State General Fund support as provided in the budget bill;

[(3) Elimination of the current requirements that waiver applicants be at least 62 years old and be eligible for or already receive a subsidy for the senior assisted housing program;**]**

[(4)**] (3)** Financial eligibility criteria which include:

(i) The current federal and State medical assistance long–term care rules for using services provided by a nursing facility, per §§ 1902, 1919, and 1924 of the federal Social Security Act, and applicable regulations adopted by the Department;

(ii) Medically needy individuals using services provided by a nursing facility under the current federal and State medical assistance eligibility criteria governed by regulations adopted by the Department and § 1919 of the federal Social Security Act; **AND**

[(iii) If permitted by the Centers for Medicare and Medicaid Services under the waiver under subsection (b) of this section, medically needy individuals whose countable income exceeds 300% of the applicable payment rate for supplemental security income but is less than the average Medicaid reimbursement rate for long–term care after all deductions including the protection from spousal impoverishment provisions of the federal Social Security Act; and

(iv)**] (III)** Categorically needy individuals with income up to 300% of the applicable payment rate for supplemental security income;

[(5)**] (4)** Waiver services that include at least the following:

(i) Assisted living services;

(ii) Case management services;

(iii) **[**Personal care services and homemaker services;

(iv) Home health care services;

(v) Respite care services;

(vi) Assistive technology;

(vii) Environmental modifications;

(viii) Medically necessary over–the–counter supplies ordered by a physician and not otherwise covered by the program;

(ix) Environmental assessments;

(x) Family/consumer**] FAMILY** training;

[(xi) Personal emergency response systems;

(xii) Home delivered meals and dietitian/nutrition services; and

(xiii) Ambulance or other transportation services for individuals receiving assisted living services or home health care services for being transported to and from health care providers and facilities for medical diagnosis or medically necessary treatment or care;**]**

(IV) DIETITIAN AND NUTRITIONIST SERVICES;

(V) MEDICAL DAY CARE SERVICES; AND

(VI) SENIOR CENTER PLUS SERVICES;

[(6)**] (5)** The opportunity to provide eligible individuals with waiver services under this section as soon as they are available without waiting for placement slots to open in the next fiscal year;

[(7)**] (6)** An increase in participant satisfaction;

[(8)**] (7)** The forestalling of functional decline;

[(9)**] (8)** A reduction in Medicaid expenditures by reducing utilization of services; and

[(10)**] (9)** The enhancement of compliance with the decision of the United States Supreme Court in the case of Olmstead v. L.C. (1999) by offering cost–effective community–based services in the most appropriate setting.

[(e) The Department shall work with the Maryland Health Care Commission to try to assure that 20% of assisted living program waiver beds are nursing facility beds that have been converted to assisted living beds.

(f)**] (D)** This section may not be construed to affect, interfere with, or interrupt any services reimbursed through the Program under this title.

[(g)**] (E)** If a person determined to be eligible to receive waiver services under this section desires to receive waiver services and an appropriate placement is available, the Department shall authorize the placement.

[(h) Waiver services shall be jointly administered by the Department and the Department of Aging.**]**

[(i)**] (F)** The Department, in consultation with representatives of the affected industry and advocates for waiver candidates, and with the approval of the Department of Aging, shall adopt regulations to implement this section **[**within 180 days of receipt of approval of the amended waiver application from the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services**]**.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.

Approved by the Governor, May 5, 2014.