

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 636

(Senator Zucker, *et al.*)

Budget and Taxation and Finance

Health and Government Operations

**Maryland Department of Health - Waiver Programs - Waitlist and Registry
Reduction (End the Wait Act)**

This bill requires the Maryland Department of Health (MDH) to (1) develop plans to reduce the waitlists for seven specified waiver programs by 50%, beginning in fiscal 2024 and (2) develop a plan to reduce the registry for the Autism Waiver that includes conducting eligibility determinations of individuals on the registry and, beginning in fiscal 2024, providing services to at least 50% of individuals determined eligible. By January 1, 2023, MDH must submit the plans to the Governor and specified committees of the General Assembly. Beginning in fiscal 2024, the Governor must include in the annual budget bill sufficient funds to carry out the bill.

Fiscal Summary

State Effect: MDH can *develop* the required plans using existing budgeted resources. *Implementation* of the plans increases Medicaid expenditures (50% general funds, 50% federal funds) by a significant but indeterminate amount beginning in FY 2024, as discussed below. Federal funds revenues increase accordingly. **This bill may establish a mandated appropriation beginning in FY 2024. This bill increases the cost of an entitlement program beginning in FY 2024.**

Local Effect: Local health departments perform additional assessments of medical eligibility and receive reimbursement for the assessments.

Small Business Effect: *Development* of the plans has no impact on small businesses; however, *implementation* of the plans has a meaningful impact, as discussed below.

Analysis

Bill Summary: The seven waivers for which MDH must develop plans are the Community Pathways Waiver, the Community Supports Waiver, the Family Supports

Waiver, the Brain Injury Waiver, the Home- and Community-Based Options Waiver, the Medical Day Care Services Waiver, and the Model Waiver for Medically Fragile Children.

Provisions of the plans relating to the Autism Waiver must be developed in conjunction with the Maryland State Department of Education (MSDE).

The plans must include (1) an assessment of whether each waiver program needs to recruit and retain new providers; (2) measures to recruit and retain providers to expand the capacity of the programs; (3) any changes in reimbursement rates needed to ensure provider capacity to provide services under the waiver programs; (4) the expected timeframe for conducting eligibility determinations for the Autism Waiver; (5) the expected timeframe for reducing the waitlist or registry for each waiver program by 50%; and (6) the projected cost of the measures to be implemented under the plans.

Current Law:

Waivers Administered by the Developmental Disabilities Administration

The Developmental Disabilities Administration (DDA) administers three Medicaid waivers: Community Pathways; Community Supports; and Family Supports. The waivers help participants to live more independently in their homes and communities and include both a self-directed service model and a traditional agency-based service model. Community Pathways supports children and adults and includes meaningful day services, support services, and residential services. Community Supports assists children and adults and includes meaningful day services and support services. Family Supports assists children up to age 21 and includes support services for children and their families. As of February 2022, the waitlist for the three waivers is approximately 3,600 individuals.

Brain Injury Waiver

MDH's Behavioral Health Administration administers a home- and community-based services waiver for individuals with brain injury (Brain Injury Waiver). The waiver provides specialized community-based services, including residential habilitation, day habilitation, supported employment, individual support services, case management, and medical day care. Eligible individuals must (1) be between age 22 and 64; (2) have sustained a brain injury after the age of 17; and (3) require a nursing facility or chronic hospital level of care and reside in a specified type of facility. There is no current waitlist for the Brain Injury Waiver.

Medicaid Home- and Community-based Services Waivers

The Home- and Community-Based Options Waiver (known as Community Options) provides community services and supports to enable older adults and people with

disabilities to live in their own homes. Available waiver services include assisted living, medical day care, family training, case management, senior center plus, nutritional services, behavioral consultation, personal assistance services, nurse monitoring, environmental assessments, and accessibility adaptations. Eligible individuals must need support with activities of daily living and meet the level of care required to qualify for nursing facility services. There are approximately 21,238 individuals on the waiver registry (waitlist).

The Medical Day Care Services Waiver offers qualified Medicaid participants services in a community-based day care center. Medical day care is a structured group program that seeks to maximize health functioning and independence of eligible Medicaid participants by providing community-based health, social, and related support services, as an alternative to institutional care. Participants must be at least 16 years old and not enrolled in another home- and community-based waiver. There is no current waitlist for the Medical Day Care Services Waiver.

The Model Waiver for Medically Fragile Children (Model Waiver) allows medically fragile individuals who would otherwise be hospitalized and are certified as needing either hospital or nursing facility level of care to receive medically necessary and appropriate services in the community. An applicant must be a chronically ill or severely impaired child younger than age 22, whose illness or disability may not require 24-hour inpatient care, but which, in the absence of home care services, may precipitate admission to or prolong a stay in a hospital, nursing facility, or other long-term facility. The maximum number of individuals who may be enrolled in the Model Waiver is 200 per the requirement of the § 1915(c) waiver. The waiver is currently full, with a waitlist of 161 individuals.

Waiver for Children with Autism Spectrum Disorder

MSDE administers the Waiver for Children with Autism Spectrum Disorder (Autism Waiver). The waiver is open to children age 2 to 21 who need an Intermediate Care Facility for the Intellectually Disabled level of care and have an Individualized Education Plan for 15 hours of special education and related services. The Autism Waiver provides respite care, environmental accessibility adaptations, family consultation, residential habilitation, intensive individual support services, therapeutic integration, and adult life planning. As of September 30, 2021, there were 6,233 applicants on the waiver's waitlist. MSDE has a contract with a vendor for waiver registration, while eligibility verification is performed by Medicaid.

State Fiscal Effect: MDH can *develop* plans to reduce the waitlists for specified waiver programs by 50% and a plan to reduce the registry for the Autism Waiver, as specified, and submit the plans to the Governor and specified committees of the General Assembly by January 1, 2023, using existing budgeted resources. The plans must include the

projected cost of the measures to be implemented in the plans, and the Governor must, beginning in fiscal 2024, include in the annual budget bill sufficient funds to carry out the plans.

MDH advises that there is currently no waitlist for the Brain Injury or Medical Day Care Services waivers. Thus, to implement the plans and reduce the waitlists for the remaining waivers, MDH expenditures (50% general funds, 50% federal funds) increase by a significant but indeterminate amount beginning in fiscal 2024. Federal fund revenues increase correspondingly. The exact amount and timing of any expenditures depend on the components of the plans, including any measures to recruit and retain providers or changes in reimbursement rates for waiver services included in the plans, and the timeframe for reducing each waitlist.

For illustrative purposes only, to reduce the waitlist for the three DDA waivers (Community Pathways, Community Supports, and Family Supports) by 50% and serve 1,800 additional individuals at an average annual cost of \$75,666, Medicaid expenditures increase by \$136.2 million (50% general funds, 50% federal funds) annually. This reflects service costs only.

For illustrative purposes only, to reduce the waitlist for the Community Options Waiver by 50%, Medicaid expenditures increase by at least \$41.1 million (50% general funds, 50% federal funds) annually. This reflects the cost to invite 10,619 individuals to apply for the waiver. Based on historical data, 60% of individuals invited to apply (6,371) submit a waiver application. Each applicant must receive an assessment of medical eligibility performed by a local health department, which is reimbursed by Medicaid at a rate of \$482.95 per assessment (for total assessment costs of \$3.1 million). Of the 6,371 applicants, approximately 26.7% (1,701) will be eligible for and enroll in the waiver. The estimated annual net cost to Medicaid per waiver slot is \$22,500, for total waiver service costs of \$38.3 million annually. This reflects medical assessment and services costs only.

For illustrative purposes only, to reduce the waitlist for the Model Waiver by 50% and serve 81 additional children at an average annual cost of \$112,500, Medicaid expenditures increase by \$9.1 million (50% general funds, 50% federal funds) annually. This reflects service costs only. As the current Model Waiver is full, a new waiver would be required to serve additional children.

Likely costs for illustrative purposes only, to conduct eligibility determinations for all individuals on the Autism Waiver registry (6,233 as of September 30, 2021), Medicaid advises that an additional five case managers are required to make financial eligibility determinations and manage communications with MSDE, at an estimated cost of \$331,188 in fiscal 2024. On average, approximately 40% of families invited to apply for the

Autism Waiver are determined eligible. Thus, an estimated 2,493 families will be determined eligible. Beginning in fiscal 2024, at least 50% of individuals determined eligible (1,247) must receive services. Expenditures increase by an average annual cost of \$20,000 per participant. To the extent 1,247 additional individuals are served, Medicaid expenditures increase by \$24.9 million annually. Although MSDE anticipates no additional costs, MDH advises that, because MSDE contracts with local school systems for case management services, additional service coordinators may be needed to support any enhanced enrollment in the waiver.

Although not specifically for this bill, the fiscal 2023 budget (specifically, Supplemental Budget No. 5) includes \$30.0 million from the Dedicated Purpose Account for a legislative priority to reduce the Autism Waiver waitlist. In fiscal 2023, \$10.0 million of this funding is required to be transferred to MSDE. The remaining \$20.0 million is retained in the Dedicated Purpose Account for use as the agency incurs expenses. Language in the budget bill expresses intent that MDH and MSDE apply to the federal Centers for Medicare and Medicaid Services to expand the number of waiver slots by 1,350.

To expand each waiver to serve these additional individuals requires significant additional personnel and other costs to ensure sufficient providers to serve this population. Such costs are not reflected in these examples.

Small Business Effect: Small business health care providers who serve waiver recipients benefit under an expansion of waiver slots and may benefit from specific measures that may be included in the plans for the recruitment and retention of providers, including potential increases in reimbursement rates for services under the waiver programs.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1403 (Delegate Pena-Melnyk, *et al.*) - Health and Government Operations.

Information Source(s): Maryland State Department of Education; Maryland Department of Health; Department of Legislative Services

Fiscal Note History:
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