

**MARYLAND-D.C. CHAPTER OF THE
NATIONAL ACADEMY OF ELDER LAW ATTORNEYS
(MD NAELA)**

DATE: Wednesday, March 30, 2022

SUBJECT: Senate Bill 28: Home- and Community-Based Services Waiver - Participation and Applications

COMMITTEE: House Health and Government Operations Committee
The Honorable Chair, Shane Pendergrass

POSITION: **SUPPORT**

Members of the National Academy of Elder Law Attorneys (NAELA) are attorneys who are experienced and trained in working with the legal problems of aging Americans and individuals of all ages with special needs. NAELA's mission is to educate, inspire, serve, and provide community to attorneys with practices in elder and special needs law.

Elder law and special needs planning includes helping such persons and their families with planning for incapacity and long-term care, Medicaid and Medicare coverage (including coverage of nursing home and home care), health and long-term care insurance, and health care decision-making. It also includes drafting of special needs and other trusts, the selection of long-term care providers, home care and nursing home problem solving, retiree health and income benefits, retirement housing, and fiduciary services or representation.

Senate Bill 28 *“alters the required contents of the home– and community–based services waiver submitted by the Maryland Department of Health to the Centers for Medicare and Medicaid Services; requires the Department to send an application to a certain number of individuals each month, if the Department maintains a waiting list or registry for the waiver.”*

Background:

The Maryland Medicaid Home & Community Based Services Options Waiver (HCBOW) program can provide needed services to Marylanders with disabilities at home, such as someone to assist them in bathing and dressing, if they are unable to afford them, **but it has an 8-year, 22,000-person waiting list (“the Registry”)**. This waiting list exists because the HCBOW is not required to meet the demand for services.

When the Maryland Department of Health (MDH) re-adjusts HCBOW program availability every few years, it does not count eligible people on the 8-year, 22,000-person waiting list. In 2016, the MDH actually reduced program availability DESPITE the size of the waiting list.

There is no way for Marylanders living at home to bypass the 8-year waiting list and stay at home, except by unnecessarily entering a nursing home. While on the Registry, registrants are also in the dark for 8 years over where they are on the waiting list.

Current Landscape:

Further, as evidenced by the large waiting list, Marylanders want home and community services. The number of older Marylanders is increasing. Of the nearly 6.1 million people in Maryland in 2020, 22.62% were age 60 or over. This percentage is expected to increase to 26.57% of Maryland’s projected population of 6.7 million by the year 2040.

Individuals 85 and over are the fastest growing segment of the population. This cohort will grow in number, statewide, from 122,092 in 2020 to 314,961 by the year 2045, a 158% increase.

As the US population ages, the number of people needing LTSS will rise. On average, 52 percent of people who turn 65 today will develop a severe disability that will require LTSS at some point. The average duration of need, over a lifetime, is about two years. <https://www.aarp.org/content/dam/aarp/ppi/2017-01/Fact%20Sheet%20Long-Term%20Support%20and%20Services.pdf>

Home care-giving falls disproportionately on women. “Gender disparities in caregiving persisted: Wives represented 57 percent of all caregiving spouses in 2004, as they did in 1994, while daughters represented almost two-thirds of all caregiving children in both years.” <https://assets.aarp.org/rgcenter/ppi/ltc/2010-09-caregiving.pdf>

Home care is less expensive

In a study prepared for MDH in December 2019, Hilltop estimates that the cost to the state of providing CO Waiver services to the 3,088 individuals on the registry who would likely meet financial eligibility and NFLOC requirements would be about \$31-\$39 million annually. The state cost for each additional CO Waiver enrollee is estimated to be about \$10,000-\$12,500 per year (\$20,000 - \$25,000 total funds). These estimates include nursing facility costs avoided. Estimates are for state costs only and do not include federal Medicaid matching funds

Notwithstanding our own well-documented experience with cost-savings and the experience of other states, we continue to severely limit and to underfund our Home and Community-Based Waiver slots. Most recently, the Department of Health actually reduced the number of available slots for home-based services (see attached appendix)

Senate Bill 28 will solve these issues by:

- Requiring a cap on waiver participation of not fewer than 7,500;
- Requiring the Department to establish a plan for waiver participation of not fewer than 7,500;
- Requiring the Department to send a waiver application to at least 600 individuals on the waiver waitlist or registry per month
- Requiring the Department to clearly and conspicuously state when the application must be submitted and when eligibility criteria must be met.

We are in strong support of the Sponsor’s amendment

- Requiring the Department to apply to the Centers for Medicare and Medicaid Services for an amendment to the Home and Community Based waiver to increase the waiver cap size to be consistent with this act.

For these reasons, we respectfully ask that you give a favorable report to Senate Bill 28.

Please contact Elena Sallitto, 410-268-9246, elena@Stavellylaw.com; or Morris Klein, 301-652-4462, morrisklein@morrisklein.com with any questions.

APPENDIX 1: Home and Community Based Waiver Slots over time:

In the original authorization application covering the years 2016 - 2021, the Department submitted the following request:

Table B-3-a (2016)

Waiver Year	Unduplicated Number of Participants
Waiver Year 1	4585
Waiver Year 2	5094
Waiver Year 3	5659
Waiver Year 4	6287
Waiver Year 5	7280

(Waiver Amendment approved July 1, 2016, Appendix B-3, a. Unduplicated Number of Participants, at pg. 32)

In 2019, the Department amended those numbers when it adopted a triage system to negotiate the 20,000-person waiting list for services. Without any indication to the public that it was seeking a change, the Department submitted the following to CMS for approval:

Table B-3-a (2019)

Waiver Year	Unduplicated Number of Participants
Waiver Year 1	4585
Waiver Year 2	5094
Waiver Year 3	4800
Waiver Year 4	5520
Waiver Year 5	6348

(Appendix B-3, a. Unduplicated Number of Participants, at pg. 35) Amendment request dated: 2019.

Its current proposal reduces slots even further. The current submission provides for the following:

Table B-3-a (2021)

Waiver Year	Unduplicated Number of Participants
Waiver Year 1	3500
Waiver Year 2	3550
Waiver Year 3	3600
Waiver Year 4	3650
Waiver Year 5	3700

Source: Current proposal at p. 32

Per MDH Letter of March 31, 2021 in response to NAELA Comments:

“The Unduplicated Number of Participants identified in the CO Waiver Renewal application posted online was incorrect the correct figures are [below]. These figures were calculated based on actual trends over the last five years of waiver enrollment. The waiver application will be updated to reflect the figures listed [below].”

Waiver Year	C
1 - FY2022	5,489
2 - FY2023	5,543
3 - FY2024	5,599
4 - FY2025	5,655
5 - FY2026	5,711