March 1, 2024

The Honorable Joseline A. Peña-Melnyk
Chair, House Health and Government Operations Committee
241 House Office Building
Annapolis, MD 21401-1991

**RE: HB 1176 – Home– and Community–Based Services Waiver – Eligibility - Letter of Information**

Dear Chair Peña-Melnyk and Committee Members:

The Maryland Department of Health (Department) respectfully submits this letter of informationfor House Bill (HB) 1176 – *Home– and Community–Based Services Waiver – Eligibility*.

Implementing the provisions of HB 1176 will cost the Department approximately $1.72 billion TF ($861.2 million GF, $861.3 million FF) over five years from FY25 through FY29 with a cost of approximately $301.4 million TF ($150.6 million GF, $150.7 million FF) in FY25.

HB 1176 requires the Department to alter the financial eligibility criteria for the Home and Community-Based Options Waiver ("Community Options"). Specifically, HB 1176 requires the Department to disregard up to 300% of the Supplemental Security Income (SSI) monthly benefit amount for categorically eligible individuals. The bill also requires the Department to change the way in which a community spouse's resource allowance is calculated based on assets owned as of the first day of the month of continuous institutionalization for 30 days or more, or as of the first day of the month in which the applicant receives an application for the waiver services. The Department must apply to the Centers for Medicare and Medicaid Services (CMS) for an amendment to the Community Options on or before October 1, 2024 to expand the financial eligibility criteria for waiver services consistent with the provisions of the bill. The bill further requires the Department to adopt regulations to establish a timeline within which the Department is required to approve or deny the waiver application.

Program financial eligibility requirements for Community Options currently permit enrollment by an individual with an income up to 300% of the applicable payment rate for SSI. To accommodate further demand for waiver slots, the Department will need appropriations to support work outlined in its report submitted in response to *SB 636 (Chapter 464 of the Acts of 2022) Waiver Programs – Waitlist Reduction (End the Wait Act)*.

*HCBS Waiver Implications - Community Options Waiver (CO Waiver)*

- <u>Cost of funded slots:</u> At this time, 4,921 of the 6,348 authorized slots under the Community Options are funded through budgetary appropriations. Implementing HB 1176 will require funding the remaining 1,427 CO Waiver slots in FY25 and FY26, while 2,579 additional slots will need to be funded annually from FY27 through FY 29. Funding the slots would cost MDH an estimated $40,000/per slot per year with a fiscal impact of $423.6 million TF ($211.8 million GF, $211.8 million FF) over five years from FY25 through FY29.

- <u>InterRAI annual review:</u> An InterRAI review is conducted for every new enrollment or eligibility renewal for the Community Options costing $482.92 per review. With increases in enrollment under HB 1176, the additional review costs will be $5.11 million TF ($2.56 million GF, $2.56 million FF) over five years from FY25 through FY29.

- <u>Staffing:</u> Seven additional Medicaid staff would be required to serve the needs of the number of newly eligible Community Options participants. The estimated fiscal impact for staffing over five years from FY25 through FY29, is $3.28 million TF ($1.64 million GF, $1.64 million FF).

*Long-Term Care Institutions - Nursing Facility Implications*
The Department cannot establish different financial standards for individuals receiving services in the community-based settings as opposed to nursing facilities. Therefore, the additional income disregard required by HB 1176 will apply to both populations. As a result, the number of individuals qualifying for Medical Assistance coverage for long-term care in nursing facilities will substantially increase, contribution of care revenue will decrease, and nursing facilities may lose revenues.

In FY23, the total nursing facility census in Maryland was 31,774 (excludes population residing in private-pay only institutions). Of the individuals residing in nursing facilities, 63% were enrolled in Medical Assistance, (20% fully covered, 80% partially covered and contributing to their cost of care). Twenty-six percent of individuals are covered by Medicare and 10% pay the full rate out-of-pocket.

- <u>Cost of loss of contribution of care:</u> In FY23, 15,985 nursing home residents contributed to their cost of care (total contribution: $197,287,390). The Department assumes that increasing the financial disregard would result in an 80% reduction in the number of participants required to contribute to their nursing facility care, increasing the number of persons eligible for full Medicaid coverage of their long-term care costs. The Department would be required to cover the costs for the population previously offset by contributions to care resulting in a fiscal impact of $888.9 million TF ($444.4 million GF, $444.4 million FF) from FY25 to FY29.

- <u>Cost of increase in utilization - from private pay to Medicaid:</u> The Department estimates that 20% (674) of the individuals who currently pay in full for nursing facility care will newly qualify for Medical Assistance coverage of their long-term care services. The estimated impact will be $401.3 million TF ($200.6 million GF, $200.6 million FF) between FY25 through FY29.

- Cost of Utilization Control Agent (UCA) review: Each application for Medical Assistance long-term care coverage requires review by the UCA at a rate of $78.83 per review. Assuming that the Department will receive 674 new applications from individuals currently paying the private rate for care, the Department estimates costs at $282,000 TF ($70,500 GF, $211,600 FF) between FY25 through FY29.

Implementation of HB 1176 will significantly increase spending on institutional settings as compared to community-based settings at a ratio of 3:1 ($1.29 billion TF cost impact on nursing facilities: $432 million TF cost impact on CO Waiver), which is in conflict with the Department's rebalancing efforts to increase the amount of funding allocated to care in community, as opposed to, institutional settings. Additionally, CMS may not approve the request to increase the income disregard regardless of care setting; in which case, new costs will require 100% State general funds.

The Department appreciates the goals of this legislation and is involved in ongoing discussions with the sponsor.

If you would like to discuss this further, please do not hesitate to contact Sarah Case-Herron, Director of Governmental Affairs at sarah.case-herron@maryland.gov or (410) 260-3190.

Sincerely,

Laura Herrera Scott, M.D., M.P.H.
Secretary