

SENATE BILL 593

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1999 Regular Session  
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By: **Senators Hollinger, Teitelbaum, Forehand, Middleton, Collins, Astle,  
Kelley, and Hoffman**

Introduced and read first time: February 5, 1999

Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

2 **Home and Community Based Services for Impaired Individuals - Medicaid**  
3 **Waiver**

4 FOR the purpose of requiring the Department of Health and Mental Hygiene to apply  
5 to the United States Department of Health and Human Services, Health Care  
6 Financing Administration for an amendment to the existing home and  
7 community based waiver program under the federal Social Security Act;  
8 providing for home and community based services to eligible medically and  
9 functionally impaired individuals; specifying the elements of a waiver  
10 application to be submitted by the Department of Health and Mental Hygiene;  
11 requiring the Department of Health and Mental Hygiene to request federal  
12 matching funds for certain waiver services; requiring the Department of Health  
13 and Human Services, in consultation with the Department of Aging and the  
14 Department of Human Resources, to adopt regulations; requiring the  
15 Department of Health and Mental Hygiene to make certain reports to the  
16 General Assembly; and generally relating to services for impaired individuals  
17 provided by the Department of Health and Mental Hygiene.

18 BY adding to  
19 Article - Health - General  
20 Section 15-132  
21 Annotated Code of Maryland  
22 (1994 Replacement Volume and 1998 Supplement)

23 Preamble

24 WHEREAS, The number of persons requiring long-term care services is  
25 growing exponentially and will continue to grow into the next millennium; and

26 WHEREAS, The number of persons requiring assisted living services is also  
27 growing and the corresponding need for financial assistance is increasing due to the  
28 high cost of these services; and

1 WHEREAS, The ability to receive needed services is currently only available  
2 in an institutional setting; now, therefore,

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

5 **Article - Health - General**

6 15-132.

7 (A) (1) IN THIS SECTION THE FOLLOWING TERMS HAVE THE MEANINGS  
8 INDICATED.

9 (2) "ASSISTED LIVING PROGRAM" HAS THE MEANING STATED IN §  
10 19-1801 OF THIS ARTICLE.

11 (3) "ASSISTED LIVING SERVICES" MEANS SERVICES PROVIDED BY AN  
12 ASSISTED LIVING PROGRAM AS DEFINED IN REGULATIONS ADOPTED BY THE  
13 DEPARTMENT.

14 (4) "CASE MANAGEMENT SERVICES" MEANS SERVICES THAT ASSIST  
15 WAIVER ELIGIBLE INDIVIDUALS IN GAINING ACCESS TO NEEDED WAIVER SERVICES  
16 AND OTHER NEEDED MEDICAL, SOCIAL, HOUSING, AND OTHER SUPPORTIVE  
17 SERVICES.

18 (5) "DURABLE MEDICAL EQUIPMENT" HAS THE MEANING STATED IN  
19 REGULATIONS ADOPTED BY THE DEPARTMENT AND INCLUDES DEVICES, CONTROLS,  
20 OR APPLIANCES THAT ENABLE INDIVIDUALS TO INCREASE THEIR ABILITIES TO  
21 PERFORM ACTIVITIES OF DAILY LIVING OR TO PERCEIVE CONTROL OR  
22 COMMUNICATE WITH THE ENVIRONMENT IN WHICH THEY LIVE.

23 (6) "ENVIRONMENTAL MODIFICATIONS" HAS THE MEANING STATED IN  
24 REGULATIONS ADOPTED BY THE DEPARTMENT AND INCLUDES THOSE PHYSICAL  
25 ADAPTATIONS TO THE HOME OR RESIDENCE WHICH ARE NECESSARY TO ENSURE  
26 THE HEALTH, WELFARE, AND SAFETY OF THE INDIVIDUAL OR WHICH ENABLE THE  
27 INDIVIDUAL TO FUNCTION WITH GREATER INDEPENDENCE AND WITHOUT WHICH,  
28 THE INDIVIDUAL WOULD REQUIRE INSTITUTIONALIZATION.

29 (7) (I) "FACILITY SERVICES" MEANS SKILLED NURSING CARE AND  
30 RELATED SERVICES, REHABILITATION SERVICES, HEALTH RELATED CARE AND  
31 SERVICES ABOVE THE LEVEL OF ROOM AND BOARD NEEDED ON A REGULAR BASIS IN  
32 ACCORDANCE WITH § 1919 OF THE FEDERAL SOCIAL SECURITY ACT AND 42 C.F.R.  
33 440.150.

34 (II) "FACILITY SERVICES" INCLUDES SERVICES PROVIDED TO  
35 INDIVIDUALS CERTIFIED AS REQUIRING A MODERATE LEVEL OF CARE IN  
36 CONFORMITY WITH THE APPLICABLE ASSISTED LIVING REGULATIONS.

37 (8) "HABILITATION SERVICES" HAS THE MEANING STATED IN 42 C.F.R.  
38 440.180 AND IN REGULATIONS ADOPTED BY THIS DEPARTMENT AND INCLUDES

1 THOSE SERVICES DESIGNED TO ASSIST INDIVIDUALS IN ACQUIRING, RETAINING AND  
2 IMPROVING THE SELF-HELP SOCIALIZATION AND ADAPTIVE SKILLS NECESSARY TO  
3 RESIDE SUCCESSFULLY IN HOME AND COMMUNITY BASED SETTINGS.

4 (9) "HOME HEALTH AGENCY" HAS THE MEANING STATED IN § 19-401 OF  
5 THIS ARTICLE.

6 (10) "HOME HEALTH CARE SERVICES" MEANS THOSE SERVICES DEFINED  
7 IN § 19-401 OF THIS ARTICLE AND IN 42 C.F.R. 440-70.

8 (11) "MEDICALLY AND FUNCTIONALLY IMPAIRED" MEANS AN  
9 INDIVIDUAL WHO IS ASSESSED BY THE DEPARTMENT TO REQUIRE FACILITY  
10 SERVICES AS DEFINED IN THIS SECTION, AND WHO, BUT FOR THE RECEIPT OF THESE  
11 SERVICES, WOULD REQUIRE INSTITUTIONALIZATION WITHIN 30 DAYS.

12 (12) "PERSONAL CARE SERVICES" MEANS THOSE SERVICES AS DEFINED  
13 IN ACCORDANCE WITH 42 C.F.R. 440.167 AND IN REGULATIONS ADOPTED BY THE  
14 DEPARTMENT.

15 (13) "RESIDENTIAL SERVICES AGENCIES" MEANS THOSE SERVICE  
16 AGENCIES AS DEFINED IN REGULATIONS ADOPTED BY THE DEPARTMENT.

17 (14) "RESPIRE CARE SERVICES" HAS THE MEANING STATED IN  
18 REGULATIONS ADOPTED BY THE DEPARTMENT AND INCLUDES THOSE SERVICES  
19 PROVIDED TO INDIVIDUALS UNABLE TO CARE FOR THEMSELVES FURNISHED ON A  
20 SHORT-TERM BASIS BECAUSE OF THE ABSENCE OR NEED FOR RELIEF OF THOSE  
21 PERSONS NORMALLY PROVIDING THE CARE.

22 (15) "WAIVER" MEANS A HOME AND COMMUNITY BASED SERVICES  
23 WAIVER UNDER § 1915(C) OF THE FEDERAL SOCIAL SECURITY ACT, SUBMITTED BY  
24 THE DEPARTMENT TO THE HEALTH CARE FINANCING ADMINISTRATION, AS  
25 REQUIRED BY SUBSECTIONS (B) AND (C) OF THIS SECTION.

26 (16) "WAIVER SERVICES" MEANS THE SERVICES COVERED UNDER AN  
27 APPROVED WAIVER THAT:

28 (I) ARE NEEDED AND CHOSEN BY AN ELIGIBLE WAIVER  
29 PARTICIPANT AS AN ALTERNATIVE TO INSTITUTIONALIZATION IN A NURSING  
30 FACILITY; AND

31 (II) ASSURE THE WAIVER PARTICIPANT'S HEALTH AND SAFETY IN  
32 THE COMMUNITY; AND

33 (III) COST NO MORE PER CAPITA TO RECEIVE SERVICES IN THE  
34 COMMUNITY THAN IN AN INSTITUTIONAL SETTING.

35 (B) ON OR BEFORE AUGUST 1, 1999, THE DEPARTMENT SHALL APPLY TO THE  
36 HEALTH CARE FINANCING ADMINISTRATION OF THE UNITED STATES DEPARTMENT  
37 OF HEALTH AND HUMAN SERVICES FOR AN AMENDMENT TO THE EXISTING HOME  
38 AND COMMUNITY BASED SERVICES WAIVER (CONTROL NUMBER 0265.90) UNDER §

1 1915(C) OF THE FEDERAL SOCIAL SECURITY ACT TO RECEIVE FEDERAL MATCHING  
2 FUNDS FOR WAIVER SERVICES RECEIVED BY ELIGIBLE MEDICALLY AND  
3 FUNCTIONALLY IMPAIRED INDIVIDUALS PARTICIPATING IN THE WAIVER.

4 (C) THE DEPARTMENT'S WAIVER APPLICATION SHALL INCLUDE THE  
5 FOLLOWING:

6 (1) AN INITIAL CAP ON WAIVER PARTICIPATION AT 7,500 INDIVIDUALS,  
7 INCLUDING NO LESS THAN 2,500 ASSISTED LIVING PROGRAM BEDS, 20% OF WHICH  
8 SHALL BE RESERVED FOR BEDS IN NURSING HOMES THAT HAVE BEEN CONVERTED  
9 TO ASSISTED LIVING BEDS;

10 (2) ELIMINATION OF THE CURRENT REQUIREMENTS THAT WAIVER  
11 APPLICANTS BE AT LEAST 62 YEARS OLD AND BE ELIGIBLE FOR OR ALREADY  
12 RECEIVE A SUBSIDY FOR THE SENIOR ASSISTED HOUSING PROGRAM;

13 (3) FINANCIAL ELIGIBILITY CRITERIA WHICH INCLUDE:

14 (I) THE CURRENT FEDERAL AND STATE MEDICAL ASSISTANCE  
15 LONG-TERM CARE RULES FOR USING FACILITY SERVICES, PER §§ 1902, 1919, AND 1924  
16 OF THE FEDERAL SOCIAL SECURITY ACT, AND APPLICABLE REGULATIONS ADOPTED  
17 BY THE DEPARTMENT;

18 (II) MEDICALLY NEEDY INDIVIDUALS USING FACILITY SERVICES  
19 UNDER THE CURRENT FEDERAL AND STATE MEDICAL ASSISTANCE ELIGIBILITY  
20 CRITERIA GOVERNED BY REGULATIONS ADOPTED BY THE DEPARTMENT AND § 1919  
21 OF THE FEDERAL SOCIAL SECURITY ACT;

22 (III) CATEGORICALLY NEEDY INDIVIDUALS WITH INCOME UP TO  
23 300% OF THE APPLICABLE PAYMENT RATE FOR SUPPLEMENTAL SECURITY INCOME;  
24 AND

25 (4) WAIVER SERVICES THAT INCLUDE AT LEAST THE FOLLOWING:

26 (I) ASSISTED LIVING SERVICES;

27 (II) CASE MANAGEMENT SERVICES;

28 (III) PERSONAL CARE SERVICES;

29 (IV) HOMEMAKER/HOME HEALTH AIDE SERVICES;

30 (V) RESPITE CARE;

31 (VI) HABILITATION CARE;

32 (VII) DURABLE MEDICAL EQUIPMENT;

33 (VIII) ENVIRONMENTAL MODIFICATION;

1 (IX) MEDICALLY NECESSARY SUPPLIES, INCLUDING COMPRESSION  
2 HOSIERY, WHEELCHAIR PADS AND CUSHIONS, WATERPROOF MATTRESS COVERS,  
3 AND FOAM RUBBER WEDGES AND OTHER FOAM RUBBER BEDDING SUPPLIES FOR  
4 INDIVIDUALS RECEIVING ASSISTED LIVING SERVICES OR HOME HEALTH CARE  
5 SERVICES;

6 (X) PERSONAL HYGIENE AND PERSONAL CARE SUPPLIES,  
7 INCLUDING NONPRESCRIPTION POWDERS, OINTMENTS, CREAMS, LOTIONS,  
8 SHAMPOOS, SHAVING SUPPLIES, TOOTHPASTE, MOUTHWASH, DENTURE CLEANERS,  
9 DISINFECTANT SPRAYS, DISPOSABLE BED PADS, DISPOSABLE INCONTINENCE  
10 SUPPLIES, AND OTHER REASONABLE AND NECESSARY ITEMS RELATING TO THE  
11 PERSONAL HYGIENE, PERSONAL CARE, GROOMING, OR COMFORT OF INDIVIDUALS  
12 RECEIVING ASSISTED LIVING SERVICES OR HOME HEALTH CARE SERVICES;

13 (XI) HOUSE CLEANING AND LAUNDRY SUPPLIES FOR INDIVIDUALS  
14 RECEIVING HOME HEALTH CARE SERVICES; AND

15 (XII) AMBULANCE OR OTHER TRANSPORTATION SERVICES FOR  
16 INDIVIDUALS RECEIVING ASSISTED LIVING SERVICES OR HOME HEALTH CARE  
17 SERVICES FOR BEING TRANSPORTED TO AND FROM HEALTH CARE PROVIDERS AND  
18 FACILITIES FOR MEDICAL DIAGNOSIS OR MEDICALLY NECESSARY TREATMENT OR  
19 CARE.

20 (D) THIS SECTION MAY NOT BE CONSTRUED TO AFFECT, INTERFERE WITH, OR  
21 INTERRUPT ANY SERVICES REIMBURSED THROUGH THE MARYLAND MEDICAL  
22 ASSISTANCE STATE PROGRAM UNDER THIS TITLE.

23 (E) ANY SAVINGS INITIALLY REALIZED IN THE MARYLAND MEDICAL  
24 ASSISTANCE LONG-TERM CARE PROGRAM FROM THE AMENDED WAIVER SHALL BE  
25 USED:

26 (1) IN THE FIRST FISCAL YEAR, TO INCREASE THE MEDICAL ASSISTANCE  
27 REIMBURSEMENT RATE FOR NURSING HOMES; AND

28 (2) EACH FISCAL YEAR THEREAFTER, IN EQUAL PARTS, TO INCREASE  
29 THE MEDICAL ASSISTANCE REIMBURSEMENT RATE FOR NURSING HOMES AND TO  
30 INCREASE WAIVER PARTICIPATION.

31 (F) IF A PERSON DETERMINED TO BE ELIGIBLE TO RECEIVE WAIVER  
32 SERVICES UNDER THIS SECTION DESIRES TO RECEIVE WAIVER SERVICES AND AN  
33 APPROPRIATE PLACEMENT IS AVAILABLE, THE DEPARTMENT SHALL AUTHORIZE  
34 THE PLACEMENT.

35 (G) AN INDIVIDUAL ELIGIBLE UNDER THE WAIVER MAY NOT BE EXCLUDED  
36 FROM ELIGIBILITY FOR OTHER TYPES OF WAIVER SERVICES.

37 (H) WAIVER SERVICES SHALL BE JOINTLY ADMINISTERED BY THE  
38 DEPARTMENTS OF AGING, HUMAN RESOURCES, AND HEALTH AND MENTAL  
39 HYGIENE.

1 (I) THE DEPARTMENT, IN CONSULTATION WITH REPRESENTATIVES OF THE  
2 AFFECTED INDUSTRY AND ADVOCATES FOR WAIVER CANDIDATES, AND WITH THE  
3 APPROVAL OF THE DEPARTMENT OF AGING AND THE DEPARTMENT OF HUMAN  
4 RESOURCES, SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SECTION WITHIN 180  
5 DAYS OF RECEIPT OF APPROVAL OF THE AMENDED WAIVER APPLICATION FROM THE  
6 HEALTH CARE FINANCING ADMINISTRATION OF THE UNITED STATES DEPARTMENT  
7 OF HEALTH AND HUMAN SERVICES.

8 (J) SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE  
9 DEPARTMENT SHALL REPORT TO THE GENERAL ASSEMBLY EVERY 6 MONTHS  
10 CONCERNING THE STATUS OF THE DEPARTMENT'S APPLICATION UNDER  
11 SUBSECTIONS (B) AND (C) OF THIS SECTION.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
13 effect July 1, 1999.