

SENATE BILL 593

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1999 Regular Session
9r1662
CF 9r2515

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

Introduced and read first time: February 5, 1999
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 26, 1999

CHAPTER _____

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; requiring the Department of Health and Mental Hygiene to
17 work with the Maryland Health Resource and Planning Commission to try to
18 assure that a certain percentage of assisted living program waiver beds are
19 nursing facility beds that have been converted to assisted living beds; defining
20 certain terms; and generally relating to home and community based services for
21 impaired individuals provided by the Department of Health and Mental
22 Hygiene.

23 BY adding to
24 Article - Health - General
25 Section 15-132
26 Annotated Code of Maryland

1 (1994 Replacement Volume and 1998 Supplement)

2 Preamble

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

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

8 WHEREAS, The ability to receive needed services is currently only available
9 in ~~an institutional setting~~ a nursing facility; now, therefore,

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

12 **Article - Health - General**

13 15-132.

14 (A) (1) IN THIS SECTION THE FOLLOWING TERMS HAVE THE MEANINGS
15 INDICATED.

16 (2) "ASSISTED LIVING PROGRAM" HAS THE MEANING STATED IN §
17 19-1801 OF THIS ARTICLE.

18 (3) "ASSISTED LIVING SERVICES" MEANS SERVICES PROVIDED BY AN
19 ASSISTED LIVING PROGRAM AS DEFINED IN REGULATIONS ADOPTED BY THE
20 DEPARTMENT.

21 (4) "CASE MANAGEMENT SERVICES" MEANS SERVICES THAT ASSIST
22 WAIVER ELIGIBLE INDIVIDUALS IN GAINING ACCESS TO NEEDED WAIVER SERVICES
23 AND OTHER NEEDED MEDICAL, SOCIAL, HOUSING, AND OTHER SUPPORTIVE
24 SERVICES.

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

30 ~~(6)~~ (5) "ENVIRONMENTAL MODIFICATIONS" HAS THE MEANING
31 STATED IN REGULATIONS ADOPTED BY THE DEPARTMENT AND INCLUDES THOSE
32 PHYSICAL ADAPTATIONS TO THE HOME OR RESIDENCE WHICH ARE NECESSARY TO
33 ENSURE THE HEALTH, WELFARE, AND SAFETY OF THE INDIVIDUAL OR WHICH
34 ENABLE THE INDIVIDUAL TO FUNCTION WITH GREATER INDEPENDENCE AND
35 WITHOUT WHICH, THE INDIVIDUAL WOULD REQUIRE ~~INSTITUTIONALIZATION~~
36 ADMISSION TO OR CONTINUED STAY IN A NURSING FACILITY.

1 ~~(7) (4) "FACILITY SERVICES" MEANS SKILLED NURSING CARE AND~~
 2 ~~RELATED SERVICES, REHABILITATION SERVICES, HEALTH RELATED CARE AND~~
 3 ~~SERVICES ABOVE THE LEVEL OF ROOM AND BOARD NEEDED ON A REGULAR BASIS IN~~
 4 ~~ACCORDANCE WITH § 1919 OF THE FEDERAL SOCIAL SECURITY ACT AND 42 C.F.R.~~
 5 ~~440.150.~~

6 ~~(H) "FACILITY SERVICES" INCLUDES SERVICES PROVIDED TO~~
 7 ~~INDIVIDUALS CERTIFIED AS REQUIRING A MODERATE LEVEL OF CARE IN~~
 8 ~~CONFORMITY WITH THE APPLICABLE ASSISTED LIVING REGULATIONS.~~

9 ~~(8) "HABILITATION SERVICES" HAS THE MEANING STATED IN 42 C.F.R.~~
 10 ~~440.180 AND IN REGULATIONS ADOPTED BY THIS DEPARTMENT AND INCLUDES~~
 11 ~~THOSE SERVICES DESIGNED TO ASSIST INDIVIDUALS IN ACQUIRING, RETAINING AND~~
 12 ~~IMPROVING THE SELF HELP SOCIALIZATION AND ADAPTIVE SKILLS NECESSARY TO~~
 13 ~~RESIDE SUCCESSFULLY IN HOME AND COMMUNITY BASED SETTINGS.~~

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

16 (6) "HEALTH RELATED CARE AND SERVICES", FOR PURPOSES OF
 17 PARAGRAPH (8) OF THIS SUBSECTION, INCLUDES:

18 (I) 24-HOUR SUPERVISION AND OBSERVATION BY A LICENSED
 19 CARE PROVIDER;

20 (II) MEDICATION ADMINISTRATION;

21 (III) INHALATION THERAPY;

22 (IV) BLADDER AND CATHETER MANAGEMENT;

23 (V) ASSISTANCE WITH SUCTIONING; AND

24 (VI) ASSISTANCE WITH TREATMENT OF SKIN DISORDERS AND
 25 DRESSINGS.

26 ~~(40) (7) "HOME HEALTH CARE SERVICES" MEANS THOSE SERVICES~~
 27 ~~DEFINED IN § 19-401 OF THIS ARTICLE AND IN 42 C.F.R. 440-70.~~

28 (8) "INTERMEDIATE LEVEL OF CARE", FOR PURPOSES OF PARAGRAPH
 29 (10)(II) OF THIS SUBSECTION, INCLUDES HEALTH RELATED CARE AND SERVICES
 30 PROVIDED TO INDIVIDUALS WHO DO NOT REQUIRE HOSPITAL OR A SKILLED LEVEL
 31 OF NURSING FACILITY CARE BUT WHOSE MENTAL, PHYSICAL, FUNCTIONAL, OR
 32 COGNITIVE CONDITION REQUIRES HEALTH SERVICES THAT:

33 (I) ARE ABOVE THE LEVEL OF ROOM AND BOARD;

34 (II) ARE PROVIDED ON A REGULAR BASIS; AND

35 (III) CAN BE MADE AVAILABLE TO THE INDIVIDUALS THROUGH
 36 INSTITUTIONAL FACILITIES.

1 ~~(14)~~ (9) "MEDICALLY AND FUNCTIONALLY IMPAIRED" MEANS AN
 2 INDIVIDUAL WHO IS ASSESSED BY THE DEPARTMENT TO REQUIRE ~~FACILITY~~
 3 ~~SERVICES~~ SERVICES PROVIDED BY A NURSING FACILITY AS DEFINED IN THIS
 4 SECTION, AND WHO, BUT FOR THE RECEIPT OF THESE SERVICES, WOULD REQUIRE
 5 ~~INSTITUTIONALIZATION~~ ADMISSION TO A NURSING FACILITY WITHIN 30 DAYS.

6 (10) (I) "NURSING FACILITY" MEANS A FACILITY THAT PROVIDES
 7 SKILLED NURSING CARE AND RELATED SERVICES, REHABILITATION SERVICES, AND
 8 HEALTH RELATED CARE AND SERVICES ABOVE THE LEVEL OF ROOM AND BOARD
 9 NEEDED ON A REGULAR BASIS IN ACCORDANCE WITH § 1919 OF THE FEDERAL
 10 SOCIAL SECURITY ACT.

11 (II) "NURSING FACILITY" INCLUDES A FACILITY THAT PROVIDES
 12 SERVICES TO INDIVIDUALS CERTIFIED AS REQUIRING AN INTERMEDIATE LEVEL OF
 13 CARE.

14 ~~(12)~~ (11) "PERSONAL CARE SERVICES" MEANS THOSE SERVICES AS
 15 DEFINED IN ACCORDANCE WITH 42 C.F.R. 440.167 AND IN REGULATIONS ADOPTED BY
 16 THE DEPARTMENT.

17 ~~(13)~~ ~~"RESIDENTIAL SERVICES AGENCIES" MEANS THOSE SERVICE~~
 18 ~~AGENCIES AS DEFINED IN REGULATIONS ADOPTED BY THE DEPARTMENT.~~

19 ~~(14)~~ (12) "RESPITE CARE SERVICES" HAS THE MEANING STATED IN
 20 REGULATIONS ADOPTED BY THE DEPARTMENT AND INCLUDES THOSE SERVICES
 21 PROVIDED TO INDIVIDUALS UNABLE TO CARE FOR THEMSELVES FURNISHED ON A
 22 SHORT-TERM BASIS BECAUSE OF THE ABSENCE OR NEED FOR RELIEF OF THOSE
 23 PERSONS NORMALLY PROVIDING THE CARE.

24 ~~(15)~~ (13) "WAIVER" MEANS A HOME AND COMMUNITY BASED SERVICES
 25 WAIVER UNDER § 1915(C) OF THE FEDERAL SOCIAL SECURITY ACT, SUBMITTED BY
 26 THE DEPARTMENT TO THE HEALTH CARE FINANCING ADMINISTRATION, AS
 27 REQUIRED BY SUBSECTIONS (B) AND (C) OF THIS SECTION.

28 ~~(16)~~ (14) "WAIVER SERVICES" MEANS THE SERVICES COVERED UNDER
 29 AN APPROVED WAIVER THAT:

30 (I) ARE NEEDED AND CHOSEN BY AN ELIGIBLE WAIVER
 31 PARTICIPANT AS AN ALTERNATIVE TO ~~INSTITUTIONALIZATION~~ ADMISSION TO OR
 32 CONTINUED STAY IN A NURSING FACILITY; AND

33 (II) ARE PART OF A PLAN OF CARE APPROVED BY THE PROGRAM;

34 ~~(H)~~ (III) ASSURE THE WAIVER PARTICIPANT'S HEALTH AND
 35 SAFETY IN THE COMMUNITY; AND

36 ~~(H)~~ (IV) COST NO MORE PER CAPITA TO RECEIVE SERVICES IN THE
 37 COMMUNITY THAN IN ~~AN INSTITUTIONAL SETTING~~ A NURSING FACILITY.

1 (B) ON OR BEFORE AUGUST 1, 1999, THE DEPARTMENT SHALL APPLY TO THE
 2 HEALTH CARE FINANCING ADMINISTRATION OF THE UNITED STATES DEPARTMENT
 3 OF HEALTH AND HUMAN SERVICES FOR AN AMENDMENT TO THE EXISTING HOME
 4 AND COMMUNITY BASED SERVICES WAIVER (CONTROL NUMBER 0265.90) UNDER §
 5 1915(C) OF THE FEDERAL SOCIAL SECURITY ACT TO RECEIVE FEDERAL MATCHING
 6 FUNDS FOR WAIVER SERVICES RECEIVED BY ELIGIBLE MEDICALLY AND
 7 FUNCTIONALLY IMPAIRED INDIVIDUALS PARTICIPATING IN THE WAIVER.

8 (C) THE DEPARTMENT'S WAIVER APPLICATION SHALL INCLUDE THE
 9 FOLLOWING:

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

14 (2) A LIMIT ON ANNUAL WAIVER PARTICIPATION BASED ON STATE
 15 GENERAL FUND SUPPORT AS PROVIDED IN THE BUDGET BILL;

16 ~~(2)~~ (3) ELIMINATION OF THE CURRENT REQUIREMENTS THAT WAIVER
 17 APPLICANTS BE AT LEAST 62 YEARS OLD AND BE ELIGIBLE FOR OR ALREADY
 18 RECEIVE A SUBSIDY FOR THE SENIOR ASSISTED HOUSING PROGRAM;

19 ~~(3)~~ (4) FINANCIAL ELIGIBILITY CRITERIA WHICH INCLUDE:

20 (I) THE CURRENT FEDERAL AND STATE MEDICAL ASSISTANCE
 21 LONG-TERM CARE RULES FOR USING ~~FACILITY SERVICES~~ SERVICES PROVIDED BY A
 22 NURSING FACILITY, PER §§ 1902, 1919, AND 1924 OF THE FEDERAL SOCIAL SECURITY
 23 ACT, AND APPLICABLE REGULATIONS ADOPTED BY THE DEPARTMENT;

24 (II) MEDICALLY NEEDY INDIVIDUALS USING ~~FACILITY SERVICES~~
 25 SERVICES PROVIDED BY A NURSING FACILITY UNDER THE CURRENT FEDERAL AND
 26 STATE MEDICAL ASSISTANCE ELIGIBILITY CRITERIA GOVERNED BY REGULATIONS
 27 ADOPTED BY THE DEPARTMENT AND § 1919 OF THE FEDERAL SOCIAL SECURITY ACT;

28 (III) CATEGORICALLY NEEDY INDIVIDUALS WITH INCOME UP TO
 29 300% OF THE APPLICABLE PAYMENT RATE FOR SUPPLEMENTAL SECURITY INCOME;
 30 AND

31 ~~(4)~~ (5) WAIVER SERVICES THAT INCLUDE AT LEAST THE FOLLOWING:

32 (I) ASSISTED LIVING SERVICES;

33 (II) CASE MANAGEMENT SERVICES;

34 (III) PERSONAL CARE SERVICES AND HOMEMAKER SERVICES;

35 (IV) ~~HOMEMAKER/HOME~~ HOME HEALTH AIDE CARE SERVICES;

36 (V) RESPITE CARE SERVICES;

- 1 (VI) ~~HABILITATION CARE~~ ASSISTIVE TECHNOLOGY;
- 2 (VII) ~~DURABLE MEDICAL EQUIPMENT~~;
- 3 (VIII) ~~(VII)~~ ENVIRONMENTAL MODIFICATION MODIFICATIONS;
- 4 (IX) ~~MEDICALLY NECESSARY SUPPLIES, INCLUDING COMPRESSION~~
5 ~~HOSIERY, WHEELCHAIR PADS AND CUSHIONS, WATERPROOF MATTRESS COVERS,~~
6 ~~AND FOAM RUBBER WEDGES AND OTHER FOAM RUBBER BEDDING SUPPLIES FOR~~
7 ~~INDIVIDUALS RECEIVING ASSISTED LIVING SERVICES OR HOME HEALTH CARE~~
8 ~~SERVICES~~;
- 9 (X) ~~PERSONAL HYGIENE AND PERSONAL CARE SUPPLIES,~~
10 ~~INCLUDING NONPRESCRIPTION POWDERS, OINTMENTS, CREAMS, LOTIONS,~~
11 ~~SHAMPOOS, SHAVING SUPPLIES, TOOTHPASTE, MOUTHWASH, DENTURE CLEANERS,~~
12 ~~DISINFECTANT SPRAYS, DISPOSABLE BED PADS, DISPOSABLE INCONTINENCE~~
13 ~~SUPPLIES, AND OTHER REASONABLE AND NECESSARY ITEMS RELATING TO THE~~
14 ~~PERSONAL HYGIENE, PERSONAL CARE, GROOMING, OR COMFORT OF INDIVIDUALS~~
15 ~~RECEIVING ASSISTED LIVING SERVICES OR HOME HEALTH CARE SERVICES~~;
- 16 (XI) ~~HOUSE CLEANING AND LAUNDRY SUPPLIES FOR INDIVIDUALS~~
17 ~~RECEIVING HOME HEALTH CARE SERVICES; AND~~
- 18 (VIII) MEDICALLY NECESSARY OVER-THE-COUNTER SUPPLIES
19 ORDERED BY A PHYSICIAN AND NOT OTHERWISE COVERED BY THE PROGRAM;
- 20 (IX) ENVIRONMENTAL ASSESSMENTS;
- 21 (X) FAMILY/CONSUMER TRAINING;
- 22 (XI) PERSONAL EMERGENCY RESPONSE SYSTEMS;
- 23 (XII) HOME DELIVERED MEALS AND DIETITIAN/NUTRITION
24 SERVICES; AND
- 25 ~~(XII)~~ (XIII) AMBULANCE OR OTHER TRANSPORTATION SERVICES FOR
26 INDIVIDUALS RECEIVING ASSISTED LIVING SERVICES OR HOME HEALTH CARE
27 SERVICES FOR BEING TRANSPORTED TO AND FROM HEALTH CARE PROVIDERS AND
28 FACILITIES FOR MEDICAL DIAGNOSIS OR MEDICALLY NECESSARY TREATMENT OR
29 CARE.
- 30 (D) THE DEPARTMENT SHALL WORK WITH THE MARYLAND HEALTH
31 RESOURCE PLANNING COMMISSION TO TRY TO ASSURE THAT 20% OF ASSISTED
32 LIVING PROGRAM WAIVER BEDS ARE NURSING FACILITY BEDS THAT HAVE BEEN
33 CONVERTED TO ASSISTED LIVING BEDS.
- 34 ~~(D)~~ (E) THIS SECTION MAY NOT BE CONSTRUED TO AFFECT, INTERFERE
35 WITH, OR INTERRUPT ANY SERVICES REIMBURSED THROUGH THE MARYLAND
36 MEDICAL ASSISTANCE STATE PROGRAM UNDER THIS TITLE.

1 ~~(E)~~ ANY SAVINGS INITIALLY REALIZED IN THE MARYLAND MEDICAL
2 ASSISTANCE LONG TERM CARE PROGRAM FROM THE AMENDED WAIVER SHALL BE
3 USED:

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

6 ~~(2)~~ EACH FISCAL YEAR THEREAFTER, IN EQUAL PARTS, TO INCREASE
7 THE MEDICAL ASSISTANCE REIMBURSEMENT RATE FOR NURSING HOMES AND TO
8 INCREASE WAIVER PARTICIPATION.

9 (F) IF A PERSON DETERMINED TO BE ELIGIBLE TO RECEIVE WAIVER
10 SERVICES UNDER THIS SECTION DESIRES TO RECEIVE WAIVER SERVICES AND AN
11 APPROPRIATE PLACEMENT IS AVAILABLE, THE DEPARTMENT SHALL AUTHORIZE
12 THE PLACEMENT.

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

15 ~~(H)~~ (G) WAIVER SERVICES SHALL BE JOINTLY ADMINISTERED BY THE
16 DEPARTMENTS OF AGING, HUMAN RESOURCES, AND HEALTH AND MENTAL
17 HYGIENE.

18 ~~(I)~~ (H) THE DEPARTMENT, IN CONSULTATION WITH REPRESENTATIVES OF
19 THE AFFECTED INDUSTRY AND ADVOCATES FOR WAIVER CANDIDATES, AND WITH
20 THE APPROVAL OF THE DEPARTMENT OF AGING AND THE DEPARTMENT OF HUMAN
21 RESOURCES, SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SECTION WITHIN 180
22 DAYS OF RECEIPT OF APPROVAL OF THE AMENDED WAIVER APPLICATION FROM THE
23 HEALTH CARE FINANCING ADMINISTRATION OF THE UNITED STATES DEPARTMENT
24 OF HEALTH AND HUMAN SERVICES.

25 ~~(J)~~ (I) SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE
26 DEPARTMENT SHALL REPORT TO THE GENERAL ASSEMBLY EVERY 6 MONTHS
27 CONCERNING THE STATUS OF THE DEPARTMENT'S APPLICATION UNDER
28 SUBSECTIONS (B) AND (C) OF THIS SECTION.

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