

HOUSE BILL 1319

Unofficial Copy  
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2002 Regular Session  
2lr2889  
CF SB 614

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By: **Delegate Hammen**

Introduced and read first time: February 18, 2002

Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Medical Assistance Programs - Long-Term Care - Eligibility Requirements**

3 FOR the purpose of requiring the Department of Health and Mental Hygiene to  
4 designate certain health care practitioners to determine whether an individual  
5 requires certain services; requiring certain health care practitioners to certify  
6 that an individual is chronically ill for the purpose of determining eligibility for  
7 certain services; establishing certain tests to determine if an individual is  
8 chronically ill; requiring the Department of Health and Mental Hygiene to adopt  
9 certain regulations; authorizing the exemption of certain property from  
10 consideration of financial eligibility for certain programs; requiring the  
11 Department of Health and Mental Hygiene with the Department of Human  
12 Resources and the Department of Aging to determine eligibility for a certain  
13 program within a certain period of time; requiring the Department of Health  
14 and Mental Hygiene to authorize certain placement within a certain period of  
15 time; authorizing that certain appeals be subject to certain requirements;  
16 defining certain terms; and generally relating to long-term care eligibility  
17 requirements for medical assistance programs.

18 BY adding to  
19 Article - Health - General  
20 Section 15-115.1  
21 Annotated Code of Maryland  
22 (2000 Replacement Volume and 2001 Supplement)

23 BY repealing and reenacting, with amendments,  
24 Article - Health - General  
25 Section 15-132(c)(4), (f), (h), and (i)  
26 Annotated Code of Maryland  
27 (2000 Replacement Volume and 2001 Supplement)

28 BY adding to  
29 Article - Health - General  
30 Section 15-132(h)  
31 Annotated Code of Maryland

1 (2000 Replacement Volume and 2001 Supplement)

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

4 **Article - Health - General**

5 15-115.1.

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

8 (2) "ACTIVITIES OF DAILY LIVING" MEANS CERTAIN FUNCTIONS THAT  
9 AN INDIVIDUAL IS EVALUATED BY IN TERMS OF LEVEL OF ASSISTANCE REQUIRED BY  
10 AN INDIVIDUAL IN PERFORMANCE OF EACH FUNCTION, INCLUDING:

11 (I) EATING, NUTRITIONAL PLANNING, AND PREPARATION OF  
12 MEALS, INCLUDING SPECIAL DIETS WHEN PRESCRIBED;

13 (II) MOBILITY, INCLUDING TRANSFERRING TO A BED OR CHAIR OR  
14 MOVING ABOUT INDOORS OR OUTDOORS;

15 (III) GETTING DRESSED OR CHANGING CLOTHES;

16 (IV) TAKING MEDICATIONS OR OTHER REMEDIES THAT ARE  
17 ORDINARILY SELF-ADMINISTERED, WHEN ORDERED BY THE INDIVIDUAL'S  
18 PERSONAL PHYSICIAN;

19 (V) COMPLETING BATHING; OR

20 (VI) TOILETING, INCLUDING BLADDER OR BOWEL REQUIREMENTS,  
21 OR BOTH, SUCH AS ASSISTANCE WITH BED PAN ROUTINES, DIAPER CARE, ROUTINES  
22 TO ACHIEVE OR MAINTAIN CONTINENCE, USING THE TOILET, OR MOVEMENT TO AND  
23 FROM THE BATHROOM.

24 (3) "HANDS-ON ASSISTANCE" MEANS PHYSICAL ASSISTANCE OF  
25 ANOTHER PERSON WITHOUT WHICH AN INDIVIDUAL WOULD BE UNABLE TO  
26 PERFORM THE ACTIVITIES OF DAILY LIVING.

27 (4) "HEALTH RELATED CARE AND SERVICES" INCLUDES ANY OF THE  
28 FOLLOWING SERVICES:

29 (I) 24-HOUR SUPERVISION AND OBSERVATION BY A LICENSED  
30 CARE PROVIDER;

31 (II) MEDICATION ADMINISTRATION;

32 (III) INHALATION THERAPY;

33 (IV) BLADDER AND CATHETER MANAGEMENT;

1 (V) ASSISTANCE WITH SUCTIONING; OR

2 (VI) ASSISTANCE WITH TREATMENT OF SKIN DISORDERS AND  
3 DRESSING.

4 (5) "NURSING FACILITY SERVICES" MEANS SERVICES PROVIDED TO  
5 INDIVIDUALS WHO DO NOT REQUIRE HOSPITAL CARE, BUT WHO, BECAUSE OF THEIR  
6 MENTAL OR PHYSICAL CONDITION, REQUIRE SKILLED NURSING CARE AND RELATED  
7 SERVICES, REHABILITATION SERVICES, OR, ON A REGULAR BASIS, HEALTH-RELATED  
8 CARE AND SERVICES (ABOVE THE LEVEL OF ROOM AND BOARD) THAT CAN BE MADE  
9 AVAILABLE TO THEM ONLY THROUGH INSTITUTIONAL FACILITIES UNDER THE  
10 SUPERVISION OF LICENSED HEALTH CARE PROFESSIONALS.

11 (6) "SEVERE COGNITIVE IMPAIRMENT" MEANS A LOSS OR  
12 DETERIORATION IN INTELLECTUAL CAPACITY THAT IS:

13 (I) COMPARABLE TO AND INCLUDES ALZHEIMER'S DISEASE AND  
14 SIMILAR FORMS OF IRREVERSIBLE DEMENTIA; AND

15 (II) MEASURED BY CLINICAL EVIDENCE AND STANDARDIZED TESTS  
16 THAT RELIABLY MEASURE IMPAIRMENT IN AN INDIVIDUAL'S:

17 1. SHORT-TERM OR LONG-TERM MEMORY;

18 2. ORIENTATION AS TO PEOPLE, PLACES, AND TIME; AND

19 3. DEDUCTIVE OR ABSTRACT REASONING.

20 (7) "STANDBY ASSISTANCE" MEANS THE PRESENCE OF ANOTHER  
21 PERSON WITHIN ARM'S REACH OF AN INDIVIDUAL THAT IS NECESSARY TO PREVENT  
22 BY PHYSICAL INTERVENTION INJURY TO THE INDIVIDUAL WHILE THE INDIVIDUAL IS  
23 PERFORMING AN ACTIVITY OF DAILY LIVING.

24 (8) "SUBSTANTIAL SUPERVISION" MEANS CONTINUAL SUPERVISION,  
25 INCLUDING CUING BY VERBAL PROMPTING, GESTURING, OR OTHER  
26 DEMONSTRATIONS, BY ANOTHER PERSON THAT IS NECESSARY TO PROTECT AN  
27 INDIVIDUAL WITH SEVERE COGNITIVE IMPAIRMENT FROM THREATS TO HEALTH OR  
28 SAFETY.

29 (9) "WAIVER" MEANS THE HOME- AND COMMUNITY-BASED SERVICES  
30 WAIVER FOR OLDER ADULTS.

31 (B) NOT WITHSTANDING CURRENT FEDERAL AND STATE MEDICAL  
32 ASSISTANCE ELIGIBILITY CRITERIA GOVERNED BY REGULATIONS ADOPTED BY THE  
33 DEPARTMENT AND § 1919 OF THE FEDERAL SOCIAL SECURITY ACT, THE  
34 DEPARTMENT SHALL DESIGNATE THE FOLLOWING HEALTH CARE PRACTITIONERS  
35 TO DETERMINE WHETHER AN INDIVIDUAL REQUIRES NURSING FACILITY SERVICES:

36 (1) A PHYSICIAN; OR

1 (2) FOR PARTICIPATION IN WAIVER SERVICES, A PHYSICIAN OR A  
2 CERTIFIED NURSE PRACTITIONER.

3 (C) AN INDIVIDUAL SHALL BE DETERMINED ELIGIBLE FOR NURSING  
4 FACILITY SERVICES IF A HEALTH CARE PRACTITIONER DESCRIBED IN SUBSECTION  
5 (B) OF THIS SECTION, CERTIFIES IN WRITING THAT AN INDIVIDUAL IS CHRONICALLY  
6 ILL.

7 (D) AN INDIVIDUAL IS CHRONICALLY ILL IF AN INDIVIDUAL MEETS ANY ONE  
8 OF THE FOLLOWING TESTS:

9 (1) THE INDIVIDUAL IS UNABLE TO PERFORM AT LEAST TWO ACTIVITIES  
10 OF DAILY LIVING WITHOUT STANDBY ASSISTANCE OR HANDS-ON ASSISTANCE FROM  
11 ANOTHER INDIVIDUAL AND HAS BEEN OR WILL BE UNABLE TO PERFORM AT LEAST  
12 TWO ACTIVITIES OF DAILY LIVING WITHOUT STANDBY ASSISTANCE OR HANDS-ON  
13 ASSISTANCE FOR A PERIOD OF 90 DAYS DUE TO LOSS OF FUNCTIONAL CAPACITY.

14 (2) THE INDIVIDUAL REQUIRES SUBSTANTIAL SUPERVISION FOR  
15 PROTECTION AGAINST THREATS TO HEALTH AND SAFETY DUE TO SEVERE  
16 COGNITIVE IMPAIRMENT.

17 (3) THE INDIVIDUAL REQUIRES NURSING FACILITY SERVICES,  
18 REHABILITATIVE SERVICES, OR OTHER HEALTH RELATED CARE AND SERVICES  
19 ABOVE THE LEVEL OF ROOM AND BOARD.

20 (E) THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THE  
21 PROVISIONS OF THIS SECTION.

22 15-132.

23 (c) The Department's waiver application shall include the following:

24 (4) Financial eligibility criteria which include[:

25 (i) The] THE current federal and State medical assistance  
26 long-term care rules for using services provided by a nursing facility, per §§ 1902,  
27 1919, and 1924 of the federal Social Security Act, and applicable regulations adopted  
28 by the Department INCLUDING THE EXEMPTION FOR AN INDIVIDUAL'S HOME UNDER  
29 COMAR 10.09.24.08; AND

30 [(ii) Medically needy individuals using services provided by a  
31 nursing facility under the current federal and State medical assistance eligibility  
32 criteria governed by regulations adopted by the Department and § 1919 of the federal  
33 Social Security Act;

34 [(iii) Categorically needy individuals with income up to 300% of the  
35 applicable payment rate for supplemental security income; and]

36 (f) (1) THE DEPARTMENT, IN CONJUNCTION WITH THE DEPARTMENT OF  
37 HUMAN RESOURCES AND THE DEPARTMENT OF AGING, SHALL DETERMINE

1 ELIGIBILITY FOR PARTICIPATION IN WAIVER SERVICES NO LATER THAN 45 DAYS  
2 AFTER THE DATE OF APPLICATION.

3           (2)       If a person determined to be eligible to receive waiver services under  
4 this section desires to receive waiver services and an appropriate placement is  
5 available, the Department shall authorize the [placement] PAYMENT ON THE FIRST  
6 DAY OF THE MONTH OF APPLICATION.

7       (H)       AN APPEAL UNDER THIS SECTION SHALL BE SUBJECT TO THE  
8 REQUIREMENTS OF THIS ARTICLE AND APPLICABLE REGULATIONS ADOPTED BY THE  
9 DEPARTMENT.

10    [(h)]     (I)       The Department, in consultation with representatives of the affected  
11 industry and advocates for waiver candidates, and with the approval of the  
12 Department of Aging and the Department of Human Resources, shall adopt  
13 regulations to implement this section within 180 days of receipt of approval of the  
14 amended waiver application from the Health Care Financing Administration of the  
15 United States Department of Health and Human Services.

16    [(i)]     (J)       Subject to § 2-1246 of the State Government Article, the Department  
17 shall report to the General Assembly every 6 months concerning the status of the  
18 Department's application under subsections (b) and (c) of this section.

19       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 July 1, 2002.