
By: **Senator Hollinger**

Introduced and read first time: February 1, 2002

Assigned to: Education, Health, and Environmental Affairs

Reassigned: Finance, February 5, 2002

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)

1 Annotated Code of Maryland
2 (2000 Replacement Volume and 2001 Supplement)

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 15-115.1.

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

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

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

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

16 (III) GETTING DRESSED OR CHANGING CLOTHES;

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

20 (V) COMPLETING BATHING; OR

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

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

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

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

32 (II) MEDICATION ADMINISTRATION;

33 (III) INHALATION THERAPY;

1 (IV) BLADDER AND CATHETER MANAGEMENT;

2 (V) ASSISTANCE WITH SUCTIONING; OR

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

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

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

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

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

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

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

20 3. DEDUCTIVE OR ABSTRACT REASONING.

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

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

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

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

1 (1) A PHYSICIAN; OR

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

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

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

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

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

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

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

23 15-132.

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

25 (4) Financial eligibility criteria which include[:

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

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

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

1 (f) (1) THE DEPARTMENT, IN CONJUNCTION WITH THE DEPARTMENT OF
2 HUMAN RESOURCES AND THE DEPARTMENT OF AGING, SHALL DETERMINE
3 ELIGIBILITY FOR PARTICIPATION IN WAIVER SERVICES NO LATER THAN 45 DAYS
4 AFTER THE DATE OF APPLICATION.

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

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

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

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

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