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By: **Delegates V. Turner, Hubbard, Kelley, Kullen, Mandel, Parker, Ross, and Vaughn**

Introduced and read first time: February 20, 2006  
Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Medical Assistance Programs - Long-Term Care Services**

3 FOR the purpose of requiring certain individuals to be determined medically eligible  
4 to receive services under the Maryland Medical Assistance Program; requiring a  
5 certain physician to certify that an individual requires certain nursing,  
6 rehabilitation, or health-related services to be determined medically eligible to  
7 receive services under a certain waiver; requiring the Department of Health and  
8 Mental Hygiene to develop a certain program under the waiver permitting  
9 certain assistance with home and community based services; requiring the  
10 Department to maintain a waiting list for certain individuals who are interested  
11 in receiving waiver services; requiring the Department to develop guidelines for  
12 the initial screening of individuals interested in receiving waiver services;  
13 requiring the Department to consider eligibility for the home and community  
14 services waiver before a Medicaid eligible individual is placed in a nursing  
15 facility; requiring certain individuals to be placed on a waiting list for waiver  
16 services under certain circumstances; requiring the status on a certain waiting  
17 list for certain individuals to be monitored by the Department; requiring that  
18 certain savings generated under the waiver program be used for certain  
19 purposes; prohibiting the Secretary of Health and Mental Hygiene from making  
20 certain amendments to waivers or seeking certain waivers to the State Medicaid  
21 Plan related to federal funding; and generally relating to the Medical Assistance  
22 Program and long-term care services.

23 BY repealing and reenacting, without amendments,  
24 Article - Health - General  
25 Section 15-101(a) and (h)  
26 Annotated Code of Maryland  
27 (2005 Replacement Volume and 2005 Supplement)

28 BY adding to  
29 Article - Health - General  
30 Section 15-115.1 and 15-132(h) and (i)  
31 Annotated Code of Maryland

1 (2005 Replacement Volume and 2005 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article - Health - General

4 Section 15-132(c), (d), and (g) through (k)

5 Annotated Code of Maryland

6 (2005 Replacement Volume and 2005 Supplement)

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

9 **Article - Health - General**

10 15-101.

11 (a) In this title the following words have the meanings indicated.

12 (h) "Program" means the Maryland Medical Assistance Program.

13 15-115.1.

14 (A) AN INDIVIDUAL SHALL BE DETERMINED MEDICALLY ELIGIBLE TO  
15 RECEIVE SERVICES UNDER THE PROGRAM IF THE INDIVIDUAL REQUIRES:

16 (1) SKILLED NURSING FACILITY CARE OR OTHER RELATED SERVICES;

17 (2) REHABILITATION SERVICES; OR

18 (3) HEALTH-RELATED SERVICES ABOVE THE LEVEL OF ROOM AND  
19 BOARD THAT ARE AVAILABLE ONLY THROUGH NURSING FACILITIES, INCLUDING  
20 INDIVIDUALS WHO BECAUSE OF SEVERE COGNITIVE IMPAIRMENTS OR OTHER  
21 CONDITIONS:

22 (I) 1. ARE CURRENTLY UNABLE TO PERFORM AT LEAST TWO  
23 ACTIVITIES OF DAILY LIVING WITHOUT HANDS-ON ASSISTANCE OR STANDBY  
24 ASSISTANCE FROM ANOTHER INDIVIDUAL; AND

25 2. HAVE BEEN OR WILL BE UNABLE TO PERFORM AT LEAST  
26 TWO ACTIVITIES OF DAILY LIVING FOR A PERIOD OF AT LEAST 90 DAYS DUE TO A  
27 LOSS OF FUNCTIONAL CAPACITY; OR

28 (II) NEED SUBSTANTIAL SUPERVISION FOR PROTECTION AGAINST  
29 THREATS TO HEALTH AND SAFETY DUE TO SEVERE COGNITIVE IMPAIRMENT.

30 (B) THE INDIVIDUAL'S PHYSICIAN, TO THE EXTENT FEASIBLE, SHALL CERTIFY  
31 THAT THE INDIVIDUAL REQUIRES THE SERVICES IN SUBSECTION (A) OF THIS  
32 SECTION.

1 15-132.

2 (c) (1) If permitted by the Centers for Medicare and Medicaid Services, an  
3 individual shall be determined medically eligible to receive services under the waiver  
4 under subsection (b) of this section if the individual requires:

5 (i) Skilled nursing facility care or other related services;

6 (ii) Rehabilitation services; or

7 (iii) Health-related services above the level of room and board that  
8 are available only through nursing facilities, including individuals who because of  
9 severe cognitive impairments or other conditions:

10 1. A. Are currently unable to perform at least two  
11 activities of daily living without hands-on assistance or standby assistance from  
12 another individual; and

13 B. Have been or will be unable to perform at least two  
14 activities of daily living for a period of at least 90 days due to a loss of functional  
15 capacity; or

16 2. Need substantial supervision for protection against  
17 threats to health and safety due to severe cognitive impairment.

18 (2) THE INDIVIDUAL'S PHYSICIAN, TO THE EXTENT FEASIBLE, SHALL  
19 CERTIFY THAT THE INDIVIDUAL REQUIRES THE SERVICES IN PARAGRAPH (1) OF THIS  
20 SUBSECTION.

21 (3) The Department shall adopt regulations to carry out the provisions of  
22 this subsection.

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

24 (1) An initial cap on waiver participation at 7,500 individuals;

25 (2) A PROGRAM TO PERMIT:

26 (I) AN INDIVIDUAL, OR A PERSON LEGALLY AUTHORIZED TO  
27 PROVIDE INFORMED CONSENT TO MEDICAL TREATMENT ON BEHALF OF AN  
28 INDIVIDUAL, TO DIRECT, MANAGE, AND PAY FOR HOME- AND COMMUNITY-BASED  
29 SERVICES, INCLUDING RECRUITING, SCREENING, HIRING, TRAINING, SCHEDULING,  
30 SUPERVISING, AND TERMINATING A PERSONAL CARE ATTENDANT;

31 (II) THE HIRING OF AN INDIVIDUAL'S FAMILY MEMBER, INCLUDING  
32 A SPOUSE OR FRIEND, AS A PERSONAL CARE ATTENDANT;

33 (III) THE DEPARTMENT TO SET THE WAGES FOR A PERSONAL CARE  
34 ATTENDANT;

1 (IV) THE LOCAL DEPARTMENT OF SOCIAL SERVICES OR THE LOCAL  
2 AREA AGENCIES ON AGING TO ASSIST AN INDIVIDUAL IN OBTAINING PERSONAL  
3 CARE ATTENDANTS; AND

4 (V) THE DEPARTMENT TO CONTRACT WITH AN INTERMEDIARY  
5 SERVICE ORGANIZATION TO PROVIDE PAYROLL, TAX, AND OTHER PAYROLL SUPPORT  
6 SERVICES ON BEHALF OF AN INDIVIDUAL;

7 (3) A limit on annual waiver participation based on State General Fund  
8 support as provided in the budget bill;

9 [(3)] (4) Elimination of the current requirements that waiver applicants  
10 be at least 62 years old and be eligible for or already receive a subsidy for the senior  
11 assisted housing program;

12 [(4)] (5) Financial eligibility criteria which include:

13 (i) The current federal and State medical assistance long-term  
14 care rules for using services provided by a nursing facility, per §§ 1902, 1919, and  
15 1924 of the federal Social Security Act, and applicable regulations adopted by the  
16 Department;

17 (ii) Medically needy individuals using services provided by a  
18 nursing facility under the current federal and State medical assistance eligibility  
19 criteria governed by regulations adopted by the Department and § 1919 of the federal  
20 Social Security Act;

21 (iii) If permitted by the Centers for Medicare and Medicaid Services  
22 under the waiver under subsection (b) of this section, medically needy individuals  
23 whose countable income exceeds 300% of the applicable payment rate for  
24 supplemental security income but is less than the average Medicaid reimbursement  
25 rate for long-term care after all deductions including the protection from spousal  
26 impoverishment provisions of the federal Social Security Act; and

27 (iv) Categorically needy individuals with income up to 300% of the  
28 applicable payment rate for supplemental security income;

29 [(5)] (6) Waiver services that include at least the following:

30 (i) Assisted living services;

31 (ii) Case management services;

32 (iii) Personal care services and homemaker services;

33 (iv) Home health care services;

34 (v) Respite care services;

35 (vi) Assistive technology;

- 1 (vii) Environmental modifications;
- 2 (viii) Medically necessary over-the-counter supplies ordered by a  
3 physician and not otherwise covered by the program;
- 4 (ix) Environmental assessments;
- 5 (x) Family/consumer training;
- 6 (xi) Personal emergency response systems;
- 7 (xii) Home delivered meals and dietitian/nutrition services; and
- 8 (xiii) Ambulance or other transportation services for individuals  
9 receiving assisted living services or home health care services for being transported to  
10 and from health care providers and facilities for medical diagnosis or medically  
11 necessary treatment or care;
- 12 [(6)] (7) The opportunity to provide eligible individuals with waiver  
13 services under this section as soon as they are available without waiting for  
14 placement slots to open in the next fiscal year;
- 15 [(7)] (8) An increase in participant satisfaction;
- 16 [(8)] (9) The forestalling of functional decline;
- 17 [(9)] (10) A reduction in Medicaid expenditures by reducing utilization of  
18 services; and
- 19 [(10)] (11) The enhancement of compliance with the decision of the United  
20 States Supreme Court in the case of *Olmstead v. L.C.* (1999) by offering cost-effective  
21 community-based services in the most appropriate setting.
- 22 (g) (1) If a person determined to be eligible to receive waiver services under  
23 this section desires to receive waiver services and an appropriate placement is  
24 available, the Department shall authorize the placement.
- 25 (2) (I) THE DEPARTMENT SHALL MAINTAIN A WAITING LIST OF  
26 ELIGIBLE INDIVIDUALS WHO ARE INTERESTED IN RECEIVING WAIVER SERVICES.
- 27 (II) THE DEPARTMENT SHALL DEVELOP GUIDELINES FOR THE  
28 INITIAL SCREENING OF INDIVIDUALS INTERESTED IN RECEIVING WAIVER SERVICES  
29 BEFORE THE INDIVIDUAL IS PLACED ON THE WAITING LIST, INCLUDING A SPOUSAL  
30 RESOURCE ASSESSMENT.
- 31 (H) (1) BEFORE A MEDICAID ELIGIBLE INDIVIDUAL IS PLACED IN A  
32 NURSING FACILITY, THE DEPARTMENT SHALL CONSIDER ELIGIBILITY FOR THE  
33 WAIVER.

1           (2)     IF AN INDIVIDUAL IS ELIGIBLE FOR THE WAIVER, THE INDIVIDUAL  
2 SHALL BE PLACED ON THE WAITING LIST AND THE INDIVIDUAL'S STATUS ON THE  
3 WAITING LIST SHALL BE MONITORED BY THE DEPARTMENT.

4     (I)     FOR EVERY FIVE MEDICAL ASSISTANCE LONG-TERM CARE RECIPIENTS  
5 DISCHARGED FROM A NURSING FACILITY BED TO A COMMUNITY-BASED WAIVER  
6 SLOT, THE DEPARTMENT SHALL USE THE SAVINGS TO ASSIST TWO MEDICALLY AND  
7 FUNCTIONALLY IMPAIRED INDIVIDUALS EITHER IN THE COMMUNITY OR WHEN  
8 DISCHARGED FROM A HOSPITAL, TO RECEIVE HOME- AND COMMUNITY-BASED  
9 WAIVER SERVICES.

10    [(h)]   (J)     Waiver services shall be jointly administered by the Department and  
11 the Department of Aging.

12    [(i)]   (K)     The proportion of individuals who qualify for medical assistance  
13 eligibility under the waiver under subsection (b) of this section who are residents of  
14 areas of the State described in § 15-141(b)(3) of this subtitle prior to implementation  
15 of the Program described in § 15-141 of this subtitle shall remain the same after  
16 implementation of the Program described in § 15-141 of this subtitle.

17    [(j)]   (L)     The Department, in consultation with representatives of the affected  
18 industry and advocates for waiver candidates, and with the approval of the  
19 Department of Aging, shall adopt regulations to implement this section within 180  
20 days of receipt of approval of the amended waiver application from the Centers for  
21 Medicare and Medicaid Services of the United States Department of Health and  
22 Human Services.

23    [(k)]   (M)     Subject to § 2-1246 of the State Government Article, the Department  
24 shall report to the General Assembly every 6 months concerning the status of the  
25 Department's application under subsections (b) and (d) of this section.

26     SECTION 2. AND BE IT FURTHER ENACTED, That, without the legislative  
27 approval of the General Assembly, the Secretary of Health and Mental Hygiene may  
28 not amend any waivers or seek approval of any pending, existing, or future waivers to  
29 the State Medicaid Plan by any means that would:

- 30           (1)     consolidate federal grants or allotments;
- 31           (2)     cap federal contributions to Medical Assistance Program spending; or
- 32           (3)     alter the proportional share of federal or State Medical Assistance  
33 Program spending.

34     SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
35 June 1, 2006.