
By: **Senators Hollinger, Colburn, Conway, Forehand, Green, Grosfeld,
Kelley, Pinsky, Ruben, Stone, and Teitelbaum**

Introduced and read first time: February 3, 2006

Assigned to: Finance

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.