

SENATE BILL 219

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By: **Senators Kelley and Currie**

Introduced and read first time: February 2, 2015

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Medical Assistance Program – Home– and Community–Based Services**
3 **Waiver – Modification**

4 FOR the purpose of altering certain financial eligibility criteria included in the home– and
5 community–based services waiver; requiring, on or before a certain date, the
6 Department of Health and Mental Hygiene to apply to the Centers for Medicare and
7 Medicaid Services for an amendment to a certain waiver to cease providing certain
8 services to certain individuals and to allow certain individuals to qualify for certain
9 services by establishing a certain qualified income trust; requiring the Department
10 to adopt certain regulations under a certain circumstance; making certain provisions
11 of this Act subject to a certain contingency; and generally relating to the home– and
12 community–based services waiver and the Maryland Medical Assistance Program.

13 BY repealing and reenacting, with amendments,
14 Article – Health – General
15 Section 15–132
16 Annotated Code of Maryland
17 (2009 Replacement Volume and 2014 Supplement)

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

20 **Article – Health – General**

21 15–132.

22 (a) (1) In this section the following terms have the meanings indicated.

23 (2) “Assisted living program” has the meaning stated in § 19–1801 of this
24 article.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (3) “Assisted living services” means services provided by an assisted living
2 program as defined in regulations adopted by the Department.

3 (4) “Case management services” means services that assist waiver eligible
4 individuals in gaining access to needed waiver services and other needed medical, social,
5 housing, and other supportive services.

6 (5) “Health related care and services” includes:

7 (i) 24-hour supervision and observation by a licensed care provider;

8 (ii) Medication administration;

9 (iii) Inhalation therapy;

10 (iv) Bladder and catheter management;

11 (v) Assistance with suctioning; or

12 (vi) Assistance with treatment of skin disorders and dressings.

13 (6) “Home health care services” means those services defined in § 19–401
14 of this article and in 42 C.F.R. 440.70.

15 (7) “Medically and functionally impaired” means an individual who is
16 assessed by the Department to require services provided by a nursing facility as defined in
17 this section, and who, but for the receipt of these services, would require admission to a
18 nursing facility within 30 days.

19 (8) “Nursing facility” means a facility that provides skilled nursing care
20 and related services, rehabilitation services, and health related care and services above the
21 level of room and board needed on a regular basis in accordance with § 1919 of the federal
22 Social Security Act.

23 (9) “Waiver” means a home- and community-based services waiver under
24 § 1915(c) of the federal Social Security Act, submitted by the Department to the Centers for
25 Medicare and Medicaid Services.

26 (10) “Waiver services” means the services covered under an approved waiver
27 that:

28 (i) Are needed and chosen by an eligible waiver participant as an
29 alternative to admission to or continued stay in a nursing facility;

30 (ii) Are part of a plan of service approved by the program;

1 (iii) Assure the waiver participant's health and safety in the
2 community; and

3 (iv) Cost no more per capita to receive services in the community
4 than in a nursing facility.

5 (b) (1) If permitted by the Centers for Medicare and Medicaid Services, an
6 individual shall be determined medically eligible to receive services if the individual
7 requires:

8 (i) Skilled nursing care or other related services;

9 (ii) Rehabilitation services; or

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

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

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

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

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

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

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

25 (2) A limit on annual waiver participation based on State General Fund
26 support as provided in the budget bill;

27 (3) Financial eligibility criteria which include:

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

31 [(ii) Medically needy individuals using services provided by a nursing
32 facility under the current federal and State medical assistance eligibility criteria governed

1 by regulations adopted by the Department and § 1919 of the federal Social Security Act;
2 and]

3 [(iii)](II) Categorically needy individuals with income up to 300% of
4 the applicable payment rate for supplemental security income;

5 (4) Waiver services that include at least the following:

6 (i) Assisted living services;

7 (ii) Case management services;

8 (iii) Family training;

9 (iv) Dietitian and nutritionist services;

10 (v) Medical day care services; and

11 (vi) Senior center plus services;

12 (5) The opportunity to provide eligible individuals with waiver services
13 under this section as soon as they are available without waiting for placement slots to open
14 in the next fiscal year;

15 (6) An increase in participant satisfaction;

16 (7) The forestalling of functional decline;

17 (8) A reduction in Medicaid expenditures by reducing utilization of
18 services; and

19 (9) The enhancement of compliance with the decision of the United States
20 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 (d) This section may not be construed to affect, interfere with, or interrupt any
23 services reimbursed through the Program under this title.

24 (e) If a person determined to be eligible to receive waiver services under this
25 section desires to receive waiver services and an appropriate placement is available, the
26 Department shall authorize the placement.

27 (f) The Department, in consultation with representatives of the affected industry
28 and advocates for waiver candidates, and with the approval of the Department of Aging,
29 shall adopt regulations to implement this section.

30 SECTION 2. AND BE IT FURTHER ENACTED, That:

1 (a) On or before October 1, 2015, the Department of Health and Mental Hygiene
2 shall apply to the Centers for Medicare and Medicaid Services for an amendment to the
3 home- and community-based waiver under § 1915(c) of the federal Social Security Act to:

4 (1) cease providing home- and community-based waiver services to
5 medically eligible individuals who meet financial eligibility criteria as medically needy
6 individuals; and

7 (2) allow medically eligible individuals to qualify for home- and
8 community-based waiver services by establishing a qualified income trust under 42 U.S.C.
9 § 1396p(d)(4)(B).

10 (b) If the Centers for Medicare and Medicaid Services approves the home- and
11 community-based waiver amendment applied for by the Department of Health and Mental
12 Hygiene under subsection (a) of this section, the Department shall adopt regulations
13 specifying requirements for qualified income trusts established under 42 U.S.C. §
14 1396p(d)(4)(B).

15 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act is
16 contingent on the receipt by the Department of Health and Mental Hygiene of a letter
17 confirming approval by the Centers for Medicare and Medicaid Services of the amendment
18 to the home- and community-based waiver applied for by the Department of Health and
19 Mental Hygiene under subsection (a) of Section 2 of this Act. If a letter confirming approval
20 of the amendment to the home- and community-based waiver is received on or before July
21 1, 2017, Section 1 of this Act shall take effect on the date notice of the approval letter is
22 received by the Department of Legislative Services in accordance with this section. If the
23 Department of Health and Mental Hygiene does not receive an approval letter on or before
24 July 1, 2017, Section 1 of this Act, with no further action required by the General Assembly,
25 shall be null and void and of no further force and effect. The Department of Health and
26 Mental Hygiene, within 5 days after receiving the approval letter from the Centers for
27 Medicare and Medicaid Services, shall forward a copy of the letter to the Department of
28 Legislative Services, 90 State Circle, Annapolis, Maryland 21401.

29 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July
30 1, 2015.