

SENATE BILL 700

O3, J1

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CF 9lr2101

By: **Senators Kelley, Augustine, Beidle, Guzzone, Kramer, Lee, Nathan-Pulliam, and West**

Introduced and read first time: February 4, 2019

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Home- and Community-Based Services Waivers – Alterations**
3 **(Laurie’s Law)**

4 FOR the purpose of repealing a certain cap on participation in a certain waiver; requiring
5 a certain waiver submitted by the Maryland Department of Health to the Centers
6 for Medicare and Medicaid Services to include a request for a cap on waiver
7 participation that is set at no less than a certain percentage of the projected annual
8 demand for certain services; requiring the Department to screen individuals who are
9 eligible to receive certain services as soon as possible after the Department receives
10 certain notification; requiring the Department to ensure that certain individuals
11 receive certain services within a certain period of time after the Department makes
12 a certain determination; providing for the manner in which a certain cap on
13 participation in a certain waiver set by the Department is to be calculated; requiring
14 the Department, under certain circumstances, to provide certain individuals on a
15 certain waiting list or registry with certain information; requiring the Department,
16 under certain circumstances, to send a copy of certain policies to a member of the
17 public on written request; requiring the Department, under certain circumstances
18 and at a certain rate, to contact certain individuals, invite certain individuals to
19 apply for certain services, and ensure that certain individuals are provided certain
20 services; requiring that the Department screen individuals who are eligible to receive
21 certain services as soon as possible and within a certain time period; requiring the
22 Department to apply to the Centers for Medicare and Medicaid Services for an
23 amendment to a certain waiver on or before a certain date, and thereafter as
24 necessary to increase the cap on a certain waiver to be consistent with a provision of
25 law; defining certain terms; making certain provisions of this Act subject to a certain
26 contingency; and generally relating to home- and community-based long-term
27 services and the Maryland Medical Assistance Program.

28 BY repealing and reenacting, with amendments,
29 Article – Health – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 15–132
2 Annotated Code of Maryland
3 (2015 Replacement Volume and 2018 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – Health – General
6 Section 15–132
7 Annotated Code of Maryland
8 (2015 Replacement Volume and 2018 Supplement)
9 (As enacted by Section 1 of this Act)

10 Preamble

11 WHEREAS, In enacting the Americans with Disabilities Act of 1990 (ADA),
12 Congress both described the isolation and segregation of individuals with disabilities in
13 institutions as a serious and pervasive form of discrimination and intended for the ADA’s
14 integration mandate to be interpreted in a manner that ensures that all individuals with
15 disabilities who are eligible for institutional placement are able to exercise a right to receive
16 long–term services and supports; and

17 WHEREAS, The holdings of the United States Supreme Court in *Olmstead v. L.C.*
18 *ex rel. Zimring*, 527 U.S. 581 (1999) and in companion cases have clearly articulated that
19 unjustified segregation of individuals with disabilities of all ages constitutes discrimination
20 in violation of Title II of the ADA and that individuals with disabilities of all ages have a
21 protected civil right to receive state–funded long–term services and supports in the
22 community rather than in institutions; and

23 WHEREAS, Section 7–132 of the Human Services Article requires that the State
24 Disabilities Plan provide for the coordination of support services that ensure compliance
25 with the federal ADA and other relevant federal and State provisions intended to protect
26 the civil rights of individuals with disabilities of all ages and that are necessary for
27 individuals with disabilities to achieve maximum participation in the mainstream of the
28 community in the most integrated setting possible; and

29 WHEREAS, The United States Department of Justice, the federal agency
30 responsible for interpreting and enforcing the ADA, has stated repeatedly that both the
31 ADA and the *Olmstead* decision extend to individuals at serious risk of institutionalization,
32 even when the risk is not imminent; and

33 WHEREAS, Current State policy effectively requires eligible individuals with
34 disabilities of all ages to be segregated in institutions as a condition precedent in order to
35 receive long–term services and supports in the community; and

36 WHEREAS, As a result of current State policy, eligible individuals with disabilities
37 of all ages who live in the community and are in need of long–term services and supports
38 find themselves at serious risk for institutional placement as a result of being denied
39 long–term services and supports in the community; and

1 WHEREAS, The continuing existence of unfair and unnecessary institutionalization
2 denies individuals with disabilities of all ages the opportunity to live and participate on an
3 equal basis in the community and costs the State millions of dollars in unnecessary
4 spending related to perpetuation of dependency and unnecessary confinement; and

5 WHEREAS, The State continues to approach decisions regarding long-term services
6 and supports from social welfare and budgetary perspectives, but the purpose of the ADA
7 requires the State to approach these decisions from a civil rights perspective; and

8 WHEREAS, The lack of adequate community-based long-term services and
9 supports in the State has imperiled the civil rights of individuals with disabilities of all
10 ages and has undermined the very purpose of the ADA; now, therefore,

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

13 **Article – Health – General**

14 15–132.

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

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

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

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

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

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

25 (ii) Medication administration;

26 (iii) Inhalation therapy;

27 (iv) Bladder and catheter management;

28 (v) Assistance with suctioning; or

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

1 (6) "Home health care services" means those services defined in § 19–401
2 of this article and in 42 C.F.R. 440.70.

3 (7) "Medically and functionally impaired" means an individual who is
4 assessed by the Department to require services provided by a nursing facility as defined in
5 this section, and who, but for the receipt of these services, would require admission to a
6 nursing facility within 30 days.

7 (8) "Nursing facility" means a facility that provides skilled nursing care
8 and related services, rehabilitation services, and health related care and services above the
9 level of room and board needed on a regular basis in accordance with § 1919 of the federal
10 Social Security Act.

11 (9) "Waiver" means a home– and community–based services waiver under
12 § 1915(c) of the federal Social Security Act, submitted by the Department to the Centers for
13 Medicare and Medicaid Services.

14 (10) "Waiver services" means the services covered under an approved waiver
15 that:

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

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

19 (iii) Assure the waiver participant's health and safety in the
20 community; and

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

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

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

27 (ii) Rehabilitation services; or

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

31 1. A. Are currently unable to perform at least two
32 activities of daily living without hands–on assistance or standby assistance from another
33 individual; and

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

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

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

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

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

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

12 (3) Financial eligibility criteria which include:

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

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

20 (iii) Categorically needy individuals with income up to 300% of the
21 applicable payment rate for supplemental security income;

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

23 (i) Assisted living services;

24 (ii) Case management services;

25 (iii) Family training;

26 (iv) Dietitian and nutritionist services;

27 (v) Medical day care services; and

28 (vi) Senior center plus services;

29 (5) The opportunity to provide eligible individuals with waiver services
30 under this section as soon as they are available without waiting for placement slots to open

1 in the next fiscal year;

2 (6) An increase in participant satisfaction;

3 (7) The forestalling of functional decline;

4 (8) A reduction in Medicaid expenditures by reducing utilization of
5 services; and

6 (9) The enhancement of compliance with the decision of the United States
7 Supreme Court in the case of *Olmstead v. L.C.* (1999) by offering cost-effective
8 community-based services in the most appropriate setting.

9 (d) This section may not be construed to affect, interfere with, or interrupt any
10 services reimbursed through the Program under this title.

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

14 **(F) (1) IF THE DEPARTMENT MAINTAINS A WAITING LIST OR REGISTRY,**
15 **THE DEPARTMENT SHALL PROVIDE AN INDIVIDUAL ON THE WAITING LIST OR**
16 **REGISTRY WITH A COPY OF THE POLICIES GOVERNING THE WAITING LIST OR**
17 **REGISTRY, AND SHALL, ON WRITTEN REQUEST FROM THE INDIVIDUAL, PROVIDE THE**
18 **INDIVIDUAL WITH INFORMATION ON:**

19 **(I) THE INDIVIDUAL'S STATUS ON THE WAITING LIST OR**
20 **REGISTRY;**

21 **(II) HOW THAT STATUS WAS DETERMINED;**

22 **(III) HOW QUICKLY, WITHIN REASONABLE PARAMETERS, THE**
23 **INDIVIDUAL MAY EXPECT TO RECEIVE COMMUNITY-BASED LONG-TERM SERVICES**
24 **AND SUPPORTS; AND**

25 **(IV) THE SERVICES AND SUPPORTS THAT THE INDIVIDUAL IS**
26 **LIKELY TO RECEIVE.**

27 **(2) IF THE DEPARTMENT MAINTAINS A WAITING LIST OR REGISTRY,**
28 **THE DEPARTMENT SHALL SEND A COPY OF THE POLICIES GOVERNING THE**
29 **DEPARTMENT'S WAITING LIST OR REGISTRY TO A MEMBER OF THE PUBLIC ON**
30 **WRITTEN REQUEST.**

31 **[(f)] (G)** The Department, in consultation with representatives of the affected
32 industry and advocates for waiver candidates, and with the approval of the Department of

1 Aging, shall adopt regulations to implement this section.

2 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
3 as follows:

4 **Article – Health – General**

5 15–132.

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

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

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

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

14 **(5) “COMMUNITY–BASED LONG–TERM SERVICES AND SUPPORTS”**
15 **MEANS LONG–TERM SERVICES AND SUPPORTS THAT SERVE INDIVIDUALS IN THE**
16 **INDIVIDUAL’S HOME AND COMMUNITY AND NOT IN AN INSTITUTION.**

17 **[(5)] (6)** “Health related care and services” includes:

18 (i) 24–hour supervision and observation by a licensed care provider;

19 (ii) Medication administration;

20 (iii) Inhalation therapy;

21 (iv) Bladder and catheter management;

22 (v) Assistance with suctioning; or

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

24 **[(6)] (7)** “Home health care services” means those services defined in §
25 19–401 of this article and in 42 C.F.R. 440.70.

26 **(8) “LONG–TERM SERVICES AND SUPPORTS” HAS THE MEANING**
27 **STATED IN § 10–1001 OF THE HUMAN SERVICES ARTICLE.**

28 **[(7)] (9)** “Medically and functionally impaired” means an individual who

1 is assessed by the Department to require services provided by a nursing facility as defined
 2 in this section, and who, but for the receipt of these services, would require admission to a
 3 nursing facility within 30 days.

4 **[(8)] (10)** “Nursing facility” means a facility that provides skilled nursing
 5 care and related services, rehabilitation services, and health related care and services
 6 above the level of room and board needed on a regular basis in accordance with § 1919 of
 7 the federal Social Security Act.

8 **[(9)] (11)** “Waiver” means a home– and community–based services waiver
 9 under § 1915(c) of the federal Social Security Act, submitted by the Department to the
 10 Centers for Medicare and Medicaid Services.

11 **[(10)] (12)** “Waiver services” means the services covered under an approved
 12 waiver that:

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

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

16 (iii) Assure the waiver participant’s health and safety in the
 17 community; and

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

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

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

24 (ii) Rehabilitation services; or

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

28 1. A. Are currently unable to perform at least two
 29 activities of daily living without hands–on assistance or standby assistance from another
 30 individual; and

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

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

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

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

6 (1) [An initial cap on waiver participation at 7,500 individuals] **A**
7 **REQUEST TO THE CENTERS FOR MEDICARE AND MEDICAID SERVICES FOR A CAP**
8 **ON WAIVER PARTICIPATION THAT IS SET AT NO LESS THAN 110% OF THE PROJECTED**
9 **ANNUAL DEMAND FOR COMMUNITY-BASED LONG-TERM SERVICES AND SUPPORTS,**
10 **AS CALCULATED UNDER SUBSECTION (G) OF THIS SECTION;**

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

13 (3) Financial eligibility criteria which include:

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

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

21 (iii) Categorically needy individuals with income up to 300% of the
22 applicable payment rate for supplemental security income;

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

24 (i) Assisted living services;

25 (ii) Case management services;

26 (iii) Family training;

27 (iv) Dietitian and nutritionist services;

28 (v) Medical day care services; and

29 (vi) Senior center plus services;

30 (5) The opportunity to provide eligible individuals with waiver services
31 under this section as soon as they are available without waiting for placement slots to open

1 in the next fiscal year;

2 (6) An increase in participant satisfaction;

3 (7) The forestalling of functional decline;

4 (8) A reduction in Medicaid expenditures by reducing utilization of
5 services; and

6 (9) The enhancement of compliance with the decision of the United States
7 Supreme Court in the case of *Olmstead v. L.C.* (1999) by offering cost-effective
8 community-based services in the most appropriate setting.

9 (d) This section may not be construed to affect, interfere with, or interrupt any
10 services reimbursed through the Program under this title.

11 (e) **(1) THE DEPARTMENT SHALL SCREEN ALL INTERESTED**
12 **INDIVIDUALS FOR ELIGIBILITY TO RECEIVE WAIVER SERVICES UNDER THIS SECTION**
13 **AS SOON AS POSSIBLE AFTER BEING NOTIFIED THAT THE INDIVIDUAL IS**
14 **INTERESTED IN RECEIVING WAIVER SERVICES.**

15 **(2) [If] SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, IF** a person
16 determined to be eligible to receive waiver services under this section desires to receive
17 waiver services and an appropriate placement is available, the Department shall authorize
18 the placement.

19 **(3) THE DEPARTMENT SHALL ENSURE THAT AN INDIVIDUAL WHO IS**
20 **DETERMINED TO BE ELIGIBLE UNDER PARAGRAPH (1) OF THIS SUBSECTION**
21 **RECEIVES WAIVER SERVICES WITHIN 30 DAYS AFTER THE DETERMINATION OF**
22 **ELIGIBILITY.**

23 (f) (1) If the Department maintains a waiting list or registry, the Department
24 shall provide an individual on the waiting list or registry with a copy of the policies
25 governing the waiting list or registry, and shall, on written request from the individual,
26 provide the individual with information on:

27 (i) The individual's status on the waiting list or registry;

28 (ii) How that status was determined;

29 (iii) How quickly, within reasonable parameters, the individual may
30 expect to receive community-based long-term services and supports; and

31 (iv) The services and supports that the individual is likely to receive.

32 (2) If the Department maintains a waiting list or registry, the Department

1 shall send a copy of the policies governing the Department's waiting list or registry to a
2 member of the public on written request.

3 **(G) THE CAP ON WAIVER PARTICIPATION FOR COMMUNITY-BASED**
4 **LONG-TERM SERVICES AND SUPPORTS SET BY THE DEPARTMENT UNDER**
5 **SUBSECTION (C) (1) OF THIS SECTION SHALL BE AT LEAST EQUAL TO THE SUM OF:**

6 **(1) 20,000 INDIVIDUALS;**

7 **(2) THE NUMBER OF INDIVIDUALS FOR WHOM THE DEPARTMENT WAS**
8 **REQUIRED TO PROVIDE HOME- AND COMMUNITY-BASED SERVICES UNDER § 15-137**
9 **OF THIS SUBTITLE DURING THE PREVIOUS YEAR; AND**

10 **(3) THE AVERAGE ANNUAL NUMBER OF INDIVIDUALS WHO HAVE**
11 **RECEIVED SERVICES UNDER THE WAIVER.**

12 **[(g)] (H)** The Department, in consultation with representatives of the affected
13 industry and advocates for waiver candidates, and with the approval of the Department of
14 Aging, shall adopt regulations to implement this section.

15 SECTION 3. AND BE IT FURTHER ENACTED, That:

16 (a) If the Maryland Department of Health maintains a waiting list or registry of
17 individuals who are eligible for a waiver under § 15-132 of the Health – General Article
18 who have not yet received waiver services, the Department shall, at a rate that would
19 remove all the individuals from the waiting list or registry by 1 year from the date of Section
20 2 of this Act becomes effective:

21 (1) contact the individuals on the waiting list or registry;

22 (2) invite the individuals to apply for waiver services under § 15-132 of the
23 Health – General Article; and

24 (3) ensure that the eligible individuals are provided with waiver services.

25 (b) That the Maryland Department of Health shall provide screenings for
26 individuals eligible to receive waiver services under § 15-132 of the Health – General
27 Article as soon as possible, but no later than 1 year from the date Section 1 of this Act
28 becomes effective.

29 SECTION 4. AND BE IT FURTHER ENACTED, That on or before July 31, 2019,
30 and thereafter as necessary, the Maryland Department of Health shall apply to the Centers
31 for Medicare and Medicaid Services for an amendment to the home- and community-based
32 waiver under § 1915(c) of the federal Social Security Act to increase the waiver cap size to
33 be consistent with Section 2 of this Act.

1 SECTION 5. AND BE IT FURTHER ENACTED, That Sections 2 and 3 of this Act
2 are contingent on the receipt by the Maryland Department of Health of a letter confirming
3 approval by the Centers for Medicare and Medicaid Services of the amendment to the
4 home– and community–based waiver applied for by the Maryland Department of Health
5 under Section 4 of this Act. If a letter confirming the approval of the amendment to the
6 home– and community–based waiver is received on or before July 1, 2024, Sections 2 and
7 3 of this Act shall take effect on the date notice of the approval letter is received by the
8 Department of Legislative Services in accordance with this section. If the Maryland
9 Department of Health does not receive an approval letter on or before July 1, 2024, Sections
10 2 and 3 of this Act, with no further action required by the General Assembly, shall be null
11 and void and of no further force and effect. The Maryland Department of Health, within 5
12 days after receiving the approval letter from the Centers for Medicare and Medicaid
13 Services, shall forward a copy of the letter to the Department of Legislative Services, 90
14 State Circle, Annapolis, Maryland 21401.

15 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect July
16 1, 2019.