

Department of Legislative Services  
 Maryland General Assembly  
 2019 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 1009 (Delegate Cullison, *et al.*)  
 Health and Government Operations

Home- and Community-Based Services Waivers - Alterations (Laurie's Law)

This bill requires the Maryland Department of Health (MDH) to provide specified information about any waiting list or registry for the Medicaid Home and Community-Based Options Waiver (HCBOW). The bill also requires MDH to apply to the federal Centers for Medicare and Medicaid Services (CMS) to increase the current cap on participation in the waiver. Contingent on this approval, the bill specifies how the cap on waiver participation must be calculated, and requires MDH to conduct specified outreach to individuals on the waiver waiting list or registry, screen specified individuals, and ensure that eligible individuals receive waiver services within a specified timeframe. **The bill takes effect July 1, 2019.**

Fiscal Summary

**State Effect:** Medicaid expenditures increase by an estimated \$49.1 million (46% general funds, 54% federal funds) in FY 2020. Federal funds revenues increase accordingly. Future years reflect annualization and ongoing costs for individuals currently on the registry; significant additional costs are likely due to the compounding effect of adding more individuals to the waiver rather than placing them on the registry, as discussed below. **The bill increases the cost of an entitlement program beginning in FY 2020.**

(\$ in millions)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
FF Revenue	\$26.5	\$72.5	\$96.1	\$96.1	\$96.1
GF Expenditure	\$22.6	\$61.8	\$81.8	\$81.8	\$81.9
FF Expenditure	\$26.5	\$72.5	\$96.1	\$96.1	\$96.1
Net Effect	(\$22.6)	(\$61.8)	(\$81.8)	(\$81.8)	(\$81.9)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

**Local Effect:** Revenues and expenditures increase for local health departments (LHDs) to conduct additional eligibility assessments, as discussed below.

**Small Business Effect:** Meaningful.

---

## Analysis

### Bill Summary:

#### *Information about the Waiver Waiting List or Registry*

If MDH maintains a waiting list or registry, the department must provide an individual on the waiting list or registry with a copy of the policies governing the waiting list or registry and, on written request, provide such information to a member of the public.

MDH must also, on written request from an individual on the waiting list or registry, provide information on (1) the individual's status on the waiting list or registry; (2) how that status was determined; (3) how quickly, within reasonable parameters, the individual may expect to receive community-based long-term services and supports; and (4) the services and supports that the individual is likely to receive.

These provisions take effect July 1, 2019.

#### *Cap on Waiver Participation*

The bill repeals the current 7,500 person cap on waiver participation. Instead, MDH must request of CMS a cap that is no less than 110% of the projected annual demand for community-based long-term services and supports. The cap must be at least the *sum* of (1) 20,000 individuals; (2) the number of individuals for whom MDH was required to provide home and community-based services during the previous year; and (3) the average annual number of individuals who have received services under the waiver.

MDH must screen all interested individuals for eligibility to receive waiver services as soon as possible after being notified that the individual is interested in receiving waiver services. MDH must ensure that an individual who is determined to be eligible receives waiver services within 30 days after determination of eligibility.

These provisions are contingent on CMS approval to increase the cap on waiver participation.

#### *Outreach to and Enrollment of Individuals on the Waiting List or Registry*

If MDH maintains a waiver waiting list or registry, MDH must, at a rate that would remove all individuals from the waiting list or registry within one-year from the date MDH receives

approval from CMS to increase the waiver cap, (1) contact the individuals on the waiting list or registry; (2) invite the individuals to apply for waiver services; and (3) ensure that the eligible individuals are provided with waiver services. MDH must provide screenings for individuals eligible to receive waiver services as soon as possible, but no later than July 1, 2020.

These provisions are contingent on CMS approval to increase the cap on waiver participation.

#### *Application to Increase Waiver Cap*

By July 31, 2019, and thereafter as necessary, MDH must apply to CMS for an amendment to the home and community-based services waiver to increase the waiver cap size as specified under the bill.

#### *Contingency Provisions*

If confirmation of CMS approval to increase the waiver cap is received by July 1, 2024, provisions in the bill regarding increasing the cap on waiver participation and outreach to and enrollment of individuals on the waiting list or registry take effect on the date notice of the approval letter from CMS is received by the Department of Legislative Services. If CMS approval is not received by that date, those provisions of the bill terminate.

**Current Law:** The Medicaid Home and Community-Based Services program, authorized under § 1915(c) of the federal Social Security Act, permits a state to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization.

If permitted by CMS, an individual must be determined medically eligible to receive services if the individual requires skilled nursing care or other related services, rehabilitation services, or health-related services above the level of room and board that are available only through nursing facilities, including specified individuals.

HCBOW must include (1) an initial cap on waiver participation of 7,500 individuals; (2) a limit on annual waiver participation based on general fund support as provided in the budget bill; (3) specified financial eligibility criteria; (4) waiver services that include specified services; (5) the opportunity to provide eligible individuals with waiver services as soon as they are available without waiting for placement slots to open in the next fiscal year; (6) an increase in participant satisfaction; (7) the forestalling of functional decline; (8) a reduction in Medicaid expenditures by reducing utilization of services; and (9) the enhancement of compliance with *Olmstead v. L.C.* (1999) by offering cost-effective community-based services in the most appropriate setting.

**State Fiscal Effect:** MDH advises that, as of December 31, 2018, there were 21,765 individuals on the HCBOB registry (waiting list). Of these individuals, 3,918 are already enrolled in and receiving long-term services and supports. The remaining 17,847 individuals on the waiver registry (including 546 individuals in nursing facilities) could apply for waiver services with an expansion of waiver slots as proposed under the bill. However, this assumes that all 17,847 individuals still reside in Maryland and remain in need of home and community-based services.

The bill requires Medicaid to apply for a waiver from CMS and, if granted, implement a substantial expansion of the number of individuals served by HCBOB within one-year of approval of the waiver. To implement the bill, Medicaid will require additional personnel and incur significant additional expenditures for waiver services.

Medicaid expenditures (46% general funds, 54% federal funds) increase by an estimated \$49.1 million in fiscal 2020. This reflects the cost of hiring nine additional full-time, permanent positions to contact individuals on the registry and invite them to apply, accept applications, process technical and financial eligibility, and preauthorize services for waiver participants once they are enrolled. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- Medicaid can prepare and submit the waiver application using existing resources.
- Medicaid applies to CMS to increase the cap on waiver slots by July 31, 2019.
- CMS approves the waiver application by November 1, 2019.
- Medicaid must hire additional personnel beginning November 1, 2019, to contact individuals on the registry, invite them to apply, and accept and process applications.
- Based on historical data, 60% of individuals on the registry apply for the waiver; thus, of the 17,847 individuals on the registry, 10,708 will submit an application.
- Each individual who submits an application must receive an assessment of medical eligibility performed by an LHD, which is reimbursed by Medicaid at a rate of \$482.95 per assessment.
- Once enrolled, each waiver participant must receive this assessment on an annual basis.
- Of the 10,708 individuals who submit a waiver application, 60% (6,425) will be eligible and enroll in the waiver.
- Individuals begin receiving services on or after January 1, 2020.
- During the first year (calendar 2020), enrollees are assumed to be enrolled for only six months to account for rolling enrollment.
- The estimated annual cost per person for waiver services is \$30,733.

- Comparatively, the annual cost per person for nursing facility services is approximately \$79,000.
- Some individuals on the registry enter a nursing facility at Medicaid cost while on the registry; the total cost for these services in calendar 2017 was \$25.8 million.
- Under the bill, 90% of these costs are avoided; thus, for a full 12 months, service expenditures are offset by \$23.2 million in cost avoidance.

	<u>FY 2020</u>	<u>FY 2021</u>
Permanent Positions	9.0	-
Waiver Services*	\$43,553,022	\$130,659,065
Medical Eligibility Assessments	5,171,525	3,102,915
Salaries and Fringe Benefits	369,646	560,885
One-time Start-up Expenses	44,010	-
Ongoing Operating Expenses	<u>3,713</u>	<u>5,625</u>
<b>Total GF/FF Expenditures</b>	<b>\$49,141,916</b>	<b>\$134,328,490</b>

\* Reflects offset of avoided nursing home costs, assumed to be three months in fiscal 2020, nine months in fiscal 2021, and a full year annually thereafter.

Federal fund matching revenues increase accordingly.

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. This estimate does not reflect any potential rate increases for waiver services or any change in the number of waiver participants.

Furthermore, this estimate reflects only the personnel and service costs to screen and enroll into services eligible individuals *currently* on the HCBOB registry within one-year of CMS approval to increase the enrollment cap. It does not reflect the additional costs required under the bill to *continue* to screen all interested individuals for eligibility as soon as possible after notification that the individual is interested in receiving waiver services and enroll eligible individuals in waiver services within 30 days after determination of eligibility.

MDH advises that, in calendar 2018, 4,572 individuals added their name to the HCBOB registry. Based on the assumptions described above, if 60% of these individuals (2,743) submitted an application, the cost of medical eligibility assessments would be an additional \$1.3 million per year (46% general funds, 54% federal funds). If 60% of those who applied (1,646) were eligible for and enrolled in the waiver, waiver service costs would be an additional \$50.6 million per year (46% general funds, 54% federal funds), offset by approximately \$23.2 million in avoided nursing facility costs. These costs are compounded each year going forward to the extent that a similar number of individuals apply and are

eligible for the waiver. MDH staffing needs increase with additional enrollment; costs associated with more staff are not reflected in this amount.

**Local Fiscal Effect:** LHD revenues increase by an estimated \$5.2 million in fiscal 2020, and \$3.1 million annually in fiscal 2021 and thereafter from reimbursement to conduct medical eligibility assessments for waiver applicants and enrollees. LHD expenditures also increase to conduct the assessments. As this reflects only the assessment costs associated with individuals currently on the HCBOW registry, revenues and expenditures increase by a significant additional amount annually going forward based on individuals new to the registry applying for and enrolling in waiver services.

**Small Business Effect:** Small business health care providers serve additional waiver participants under the bill.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 700 (Senator Kelley, *et al.*) - Finance.

**Information Source(s):** Maryland Department of Health; Department of Legislative Services

**Fiscal Note History:** First Reader - March 8, 2019  
an/ljm

---

Analysis by: Jennifer B. Chasse

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510