

HOUSE BILL 590

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4lr0050

By: **Chair, Health and Government Operations Committee (By Request – Departmental – Health and Mental Hygiene)**

Introduced and read first time: January 30, 2014

Assigned to: Health and Government Operations

Committee Report: Favorable

House action: Adopted

Read second time: March 5, 2014

CHAPTER _____

1 AN ACT concerning

2 **Maryland Medical Assistance Program – Waivers – Consolidation and Repeal**

3 FOR the purpose of repealing the Living at Home Waiver Program; altering the
4 requirements for applicants, financial eligibility criteria, and services to be
5 included in the home– and community–based services waiver in the Department
6 of Health and Mental Hygiene (DHMH); repealing the requirement that DHMH
7 work with the Maryland Health Care Commission to convert a certain
8 percentage of nursing facility beds to assisted living program waiver beds;
9 repealing the requirement that certain waiver services be jointly administered
10 by DHMH and the Department of Aging; repealing a requirement that DHMH
11 adopt certain regulations within a certain time period; repealing certain
12 obsolete language; repealing and altering certain definitions; and generally
13 relating to home– and community–based services waivers under the Maryland
14 Medical Assistance Program.

15 BY repealing

16 Article – Health – General

17 Section 15–801 through 15–809 and the subtitle “Subtitle 8. Living at Home
18 Waiver Program”

19 Annotated Code of Maryland

20 (2009 Replacement Volume and 2013 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article – Health – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 15–132
2 Annotated Code of Maryland
3 (2009 Replacement Volume and 2013 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That Section(s) 15–801 through 15–809 and the subtitle “Subtitle 8.
6 Living at Home Waiver Program” of Article – Health – General of the Annotated Code
7 of Maryland be repealed.

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

10 **Article – Health – General**

11 15–132.

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

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

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

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

20 [(5) “Dual eligibility” means simultaneous eligibility for health
21 insurance coverage under both the Program and Medicare and for which the
22 Department may obtain federal matching funds.

23 (6) “Environmental modifications” has the meaning stated in
24 regulations adopted by the Department and includes those physical adaptations to the
25 home or residence which are necessary to ensure the health, welfare, and safety of the
26 individual or which enable the individual to function with greater independence and
27 without which, the individual would require admission to or continued stay in a
28 nursing facility.

29 (7) (5) “Health related care and services”[, for purposes of
30 paragraph (9) of this subsection,] includes:

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

33 (ii) Medication administration;

- 1 (iii) Inhalation therapy;
- 2 (iv) Bladder and catheter management;
- 3 (v) Assistance with suctioning; or
- 4 (vi) Assistance with treatment of skin disorders and dressings.

5 **[(8)] (6)** “Home health care services” means those services defined in
6 § 19–401 of this article and in 42 C.F.R. 440.70.

7 **[(9)** “Intermediate level of care”, for purposes of paragraph (11)(ii) of
8 this subsection, includes health related care and services provided to individuals who
9 do not require hospital or a skilled level of nursing facility care but whose mental,
10 physical, functional, or cognitive condition requires health services that:

- 11 (i) Are above the level of room and board;
- 12 (ii) Are provided on a regular basis at least 5 days in a 7–day
13 period; and
- 14 (iii) Can be made available to the individuals through
15 institutional facilities.]

16 **[(10)] (7)** “Medically and functionally impaired” means an individual
17 who is assessed by the Department to require services provided by a nursing facility as
18 defined in this section, and who, but for the receipt of these services, would require
19 admission to a nursing facility within 30 days.

20 **[(11)] (8)** **[(i)]** “Nursing facility” means a facility that provides
21 skilled nursing care and related services, rehabilitation services, and health related
22 care and services above the level of room and board needed on a regular basis in
23 accordance with § 1919 of the federal Social Security Act.

24 **[(ii)]** “Nursing facility” includes a facility that provides services to
25 individuals certified as requiring an intermediate level of care.

26 (12) “Personal care services” means those services as defined in
27 accordance with 42 C.F.R. 440.167 and in regulations adopted by the Department.

28 (13) “Respite care services” has the meaning stated in regulations
29 adopted by the Department and includes those services provided to individuals unable
30 to care for themselves furnished on a short–term basis because of the absence or need
31 for relief of those persons normally providing the care.

1 (14) **(9)** “Waiver” means a [home and community based]
 2 **HOME- AND COMMUNITY-BASED** services waiver under § 1915(c) of the federal
 3 Social Security Act, submitted by the Department to the Centers for Medicare and
 4 Medicaid Services[, as required by subsections (b) and (d) of this section].

5 (15) **(10)** “Waiver services” means the services covered under an
 6 approved waiver that:

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

9 (ii) Are part of a plan of [care] **SERVICE** approved by the
 10 program;

11 (iii) Assure the waiver participant’s health and safety in the
 12 community; and

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

15 **(b)** On or before August 1, 1999, the Department shall apply to the Health
 16 Care Financing Administration of the United States Department of Health and
 17 Human Services for an amendment to the existing home and community based
 18 services waiver (Control Number 0265.90) under § 1915(c) of the federal Social
 19 Security Act to receive federal matching funds for waiver services received by eligible
 20 medically and functionally impaired individuals participating in the waiver.]

21 **(c) (B)** (1) If permitted by the Centers for Medicare and Medicaid
 22 Services, an individual shall be determined medically eligible to receive services
 23 [under the waiver under subsection (b) of this section] if the individual requires:

24 (i) Skilled nursing [facility] care or other related services;

25 (ii) Rehabilitation services; or

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

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

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

5 **[(d)] (C)** The Department's waiver **[application]** shall include the following:

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

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

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

12 **[(4)] (3)** 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 1924
15 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; **AND**

21 **[(iii)** If permitted by the Centers for Medicare and Medicaid
22 Services under the waiver under subsection (b) of this section, medically needy
23 individuals 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)] (III)** Categorically needy individuals with income up to
28 300% of the applicable payment rate for supplemental security income;

29 **[(5)] (4)** Waiver services that include at least the following:

30 (i) Assisted living services;

31 (ii) Case management services;

- 1 (iii) [Personal care services and homemaker services;
- 2 (iv) Home health care services;
- 3 (v) Respite care services;
- 4 (vi) Assistive technology;
- 5 (vii) Environmental modifications;
- 6 (viii) Medically necessary over-the-counter supplies ordered by a
7 physician and not otherwise covered by the program;
- 8 (ix) Environmental assessments;
- 9 (x) Family/consumer] **FAMILY** training;
- 10 [(xi) Personal emergency response systems;
- 11 (xii) Home delivered meals and dietitian/nutrition services; and
- 12 (xiii) Ambulance or other transportation services for individuals
13 receiving assisted living services or home health care services for being transported to
14 and from health care providers and facilities for medical diagnosis or medically
15 necessary treatment or care;]
- 16 **(IV) DIETITIAN AND NUTRITIONIST SERVICES;**
- 17 **(V) MEDICAL DAY CARE SERVICES; AND**
- 18 **(VI) SENIOR CENTER PLUS SERVICES;**
- 19 **[(6) (5)** The opportunity to provide eligible individuals with waiver
20 services under this section as soon as they are available without waiting for placement
21 slots to open in the next fiscal year;
- 22 **[(7) (6)** An increase in participant satisfaction;
- 23 **[(8) (7)** The forestalling of functional decline;
- 24 **[(9) (8)** A reduction in Medicaid expenditures by reducing utilization
25 of services; and
- 26 **[(10) (9)** The enhancement of compliance with the decision of the
27 United States Supreme Court in the case of *Olmstead v. L.C.* (1999) by offering
28 cost-effective community-based services in the most appropriate setting.

1 [(e) The Department shall work with the Maryland Health Care Commission
2 to try to assure that 20% of assisted living program waiver beds are nursing facility
3 beds that have been converted to assisted living beds.

4 (f) (D) This section may not be construed to affect, interfere with, or
5 interrupt any services reimbursed through the Program under this title.

6 [(g) (E) If a person determined to be eligible to receive waiver services
7 under this section desires to receive waiver services and an appropriate placement is
8 available, the Department shall authorize the placement.

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

11 [(i) (F) The Department, in consultation with representatives of the
12 affected industry and advocates for waiver candidates, and with the approval of the
13 Department of Aging, shall adopt regulations to implement this section [within 180
14 days of receipt of approval of the amended waiver application from the Centers for
15 Medicare and Medicaid Services of the United States Department of Health and
16 Human Services].

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2014.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.