

SENATE BILL 642

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By: **Senators Kelley, Hayes, Lee, and West**
Introduced and read first time: February 3, 2020
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Home- and Community-Based Waiver Services – Alterations and Task Force**

3 FOR the purpose of altering the required contents of a certain waiver submitted by the
4 Maryland Department of Health to the Centers for Medicare and Medicaid Services;
5 requiring the Department to send monthly letters to individuals who are eligible or
6 likely to be eligible for certain waiver participation; requiring that certain letters be
7 sent in a certain quantity; requiring the Department to ensure that certain
8 individuals receive certain services within a certain period of time after the
9 Department makes a certain determination; establishing the Task Force on
10 Home- and Community-Based Waiver Services; providing for the composition,
11 chair, and staffing of the Task Force; prohibiting a member of the Task Force from
12 receiving certain compensation, but authorizing the reimbursement of certain
13 expenses; requiring the Task Force to study and make recommendations regarding
14 certain matters; requiring the Task Force to report its findings and
15 recommendations to the Governor and the General Assembly on or before a certain
16 date; defining a certain term; providing for the termination of certain provisions of
17 this Act; and generally relating to home- and community-based waiver services.

18 BY repealing and reenacting, with amendments,
19 Article – Health – General
20 Section 15–132
21 Annotated Code of Maryland
22 (2019 Replacement Volume)

23 Preamble

24 WHEREAS, In enacting the Americans with Disabilities Act of 1990 (ADA),
25 Congress both described the isolation and segregation of individuals with disabilities in
26 institutions as a serious and pervasive form of discrimination and intended for the ADA’s
27 integration mandate to be interpreted in a manner that ensures that all individuals with
28 disabilities who are eligible for institutional placement are able to exercise a right to receive

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 long-term services and supports; and

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

8 WHEREAS, Section 7-132 of the Human Services Article requires that the State
9 Disabilities Plan provide for the coordination of support services that ensure compliance
10 with the federal ADA and other relevant federal and State provisions intended to protect
11 the civil rights of individuals with disabilities of all ages and that are necessary for
12 individuals with disabilities to achieve maximum participation in the mainstream of the
13 community in the most integrated setting possible; and

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

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

21 WHEREAS, As a result of current State policy, eligible individuals with disabilities
22 of all ages who live in the community and are in need of long-term services and supports
23 find themselves at serious risk for institutional placement as a result of being denied
24 long-term services and supports in the community; and

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

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

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

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

37 **Article – Health – General**

1 15–132.

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

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

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

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

10 (5) **“COMMUNITY–BASED LONG–TERM SERVICES AND SUPPORTS”**
11 **MEANS LONG–TERM SERVICES AND SUPPORTS, AS DEFINED IN § 10–1001 OF THE**
12 **HUMAN SERVICES ARTICLE, THAT SERVE INDIVIDUALS IN THE INDIVIDUALS’**
13 **HOMES AND COMMUNITIES AND NOT IN AN INSTITUTION.**

14 [(5)] (6) “Health related care and services” includes:

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

16 (ii) Medication administration;

17 (iii) Inhalation therapy;

18 (iv) Bladder and catheter management;

19 (v) Assistance with suctioning; or

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

21 [(6)] (7) “Home health care services” means those services defined in §
22 19–401 of this article and in 42 C.F.R. 440.70.

23 [(7)] (8) “Medically and functionally impaired” means an individual who
24 is assessed by the Department to require services provided by a nursing facility as defined
25 in this section, and who, but for the receipt of these services, would require admission to a
26 nursing facility within 30 days.

27 [(8)] (9) “Nursing facility” means a facility that provides skilled nursing
28 care and related services, rehabilitation services, and health related care and services
29 above the level of room and board needed on a regular basis in accordance with § 1919 of
30 the federal Social Security Act.

1 ~~[(9)]~~ **(10)** “Waiver” means a home– and community–based services waiver
2 under § 1915(c) of the federal Social Security Act, submitted by the Department to the
3 Centers for Medicare and Medicaid Services.

4 ~~[(10)]~~ **(11)** “Waiver services” means the services covered under an approved
5 waiver that:

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

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

9 (iii) Assure the waiver participant’s health and safety in the
10 community; and

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

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

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

17 (ii) Rehabilitation services; or

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

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

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

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

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

31 (c) The Department’s waiver shall include the following:

1 (1) [An initial] A cap on waiver participation [at] **OF NOT FEWER THAN**
2 7,500 individuals;

3 (2) [A limit on annual waiver participation based on State General Fund
4 support as provided in the budget bill] **A PLAN FOR WAIVER PARTICIPATION OF NOT**
5 **FEWER THAN 7,500 INDIVIDUALS;**

6 (3) Financial eligibility criteria which include:

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

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

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

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

17 (i) Assisted living services;

18 (ii) Case management services;

19 (iii) Family training;

20 (iv) Dietitian and nutritionist services;

21 (v) Medical day care services; and

22 (vi) Senior center plus services;

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

26 (6) An increase in participant satisfaction;

27 (7) The forestalling of functional decline;

28 (8) A reduction in Medicaid expenditures by reducing utilization of
29 services; and

30 (9) The enhancement of compliance with the decision of the United States

1 Supreme Court in the case of *Olmstead v. L.C.* (1999) by offering cost-effective
2 community-based services in the most appropriate setting.

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

5 (e) **(1) (I) THE DEPARTMENT SHALL SEND MONTHLY WAIVER NOTICE**
6 **LETTERS TO INDIVIDUALS WHO ARE ELIGIBLE OR LIKELY TO BE ELIGIBLE FOR**
7 **WAIVER PARTICIPATION.**

8 **(II) WAIVER LETTERS SENT UNDER THIS PARAGRAPH SHALL BE**
9 **SENT IN SUFFICIENT QUANTITY TO ALLOW FOR AT LEAST 7,500 INDIVIDUALS TO**
10 **PARTICIPATE IN THE WAIVER EACH FISCAL YEAR.**

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

14 **(I) AUTHORIZE** the placement; AND

15 **(II) ENSURE THAT THE INDIVIDUAL RECEIVES WAIVER**
16 **SERVICES WITHIN 30 DAYS AFTER THE DETERMINATION OF ELIGIBILITY WAS MADE.**

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

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

21 (a) There is a Task Force on Home- and Community-Based Waiver Services.

22 (b) The Task Force consists of the following members:

23 (1) two members of the Senate of Maryland, appointed by the President of
24 the Senate:

25 (i) one of whom is a member of the Budget and Taxation Committee;
26 and

27 (ii) one of whom is a member of the Finance Committee;

28 (2) two members of the House of Delegates, appointed by the Speaker of
29 the House:

30 (i) one of whom is a member of the Appropriations Committee; and

1 (ii) one of whom is a member of the Health and Government
2 Operations Committee;

3 (3) the Secretary of Health, or the Secretary's designee; and

4 (4) the following members, appointed jointly by the President of the Senate
5 and the Speaker of the House:

6 (i) three representatives of the Elder Law and Disability Rights
7 Section of the Maryland State Bar Association;

8 (ii) one medical professional with expertise and experience in
9 geriatrics;

10 (iii) one representative of the Greater Maryland Chapter of the
11 Alzheimer's Association;

12 (iv) one representative of AARP Maryland;

13 (v) two representatives from community-based organizations
14 focused on disabilities and senior citizens;

15 (vi) one representative of nursing homes in the State;

16 (vii) one representative of a local area agency on aging;

17 (viii) one member with academic or research expertise that includes
18 the economics of providing long-term services and supports; and

19 (ix) three representatives of individuals who have received or are
20 receiving services through the home- and community-based services waiver under § 1915
21 of the federal Social Security Act.

22 (c) The President of the Senate and the Speaker of the House jointly shall
23 designate the chair of the Task Force.

24 (d) The Department of Legislative Services shall provide staff for the Task Force.

25 (e) A member of the Task Force:

26 (1) may not receive compensation as a member of the Task Force; but

27 (2) is entitled to reimbursement for expenses under the Standard State
28 Travel Regulations, as provided in the State budget.

29 (f) The Task Force shall study and make recommendations regarding:

1 (1) the modernization of the policies of the Maryland Department of Health
2 to reflect the State's goal to ensure the delivery of care in the most appropriate setting;

3 (2) the use of State policies and payment mechanisms to:

4 (i) support community-based models of care;

5 (ii) improve transparency and efficiency in providing services under
6 the home- and community-based services waiver under § 1915 of the federal Social
7 Security Act; and

8 (iii) eliminate the waiting list for services provided under the
9 home- and community-based services waiver under § 1915 of the federal Social Security
10 Act; and

11 (3) programs that the Maryland Medical Assistance Program could
12 implement to serve the population in need of home- and community-based services.

13 (g) On or before December 1, 2020, the Task Force shall report its findings and
14 recommendations to the Governor and, in accordance with § 2-1257 of the State
15 Government Article, the General Assembly.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
17 1, 2020. Section 2 shall remain effective for a period of 1 year and, at the end of June 30,
18 2021, Section 2 of this Act, with no further action required by the General Assembly, shall
19 be abrogated and of no further force and effect.