

SENATE BILL 939

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By: **Senator Kelley**

Introduced and read first time: February 5, 2018

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Community-Based Services Waivers and State Disabilities Plan – Alterations**
3 **(Maryland Disabilities Act)**

4 FOR the purpose of requiring that a certain home– and community–based services waiver
5 include a requirement that at least a certain amount of participants live in
6 community–based housing immediately before receiving certain services; requiring
7 that a certain waiver required by the Maryland Department of Health implement a
8 certain waiting list; requiring the Maryland Department of Health to provide
9 individuals on the waiting list with certain information; requiring the Maryland
10 Department of Health to send a copy of certain policies to a member of the public on
11 request; requiring the Maryland Department of Health to adopt certain regulations
12 in consultation with the Department of Disabilities; requiring the Maryland
13 Department of Health, in consultation with and with the approval of the Department
14 of Aging, to conduct a certain survey; requiring the Maryland Department of Health
15 to report the results of a certain survey to the Governor and the General Assembly
16 on or before a certain date; requiring certain provisions of the State Disabilities Plan
17 to include individuals with disabilities of all ages; defining certain terms; and
18 generally relating to home– and community–based long–term services and supports
19 and the State Disabilities Plan.

20 BY repealing and reenacting, with amendments,
21 Article – Health – General
22 Section 15–132
23 Annotated Code of Maryland
24 (2015 Replacement Volume and 2017 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – Human Services
27 Section 7–132
28 Annotated Code of Maryland
29 (2007 Volume and 2017 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,
2 Article – Human Services
3 Section 10–1001(a) and (c)
4 Annotated Code of Maryland
5 (2007 Volume and 2017 Supplement)

6 Preamble

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

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

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

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

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

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

36 WHEREAS, The continuing existence of unfair and unnecessary institutionalization
37 denies individuals with disabilities of all ages the opportunity to live and participate on an
38 equal basis in the community and costs the State millions of dollars in unnecessary

1 spending related to perpetuation of dependency and unnecessary confinement; and

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

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

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
9 That the Laws of Maryland 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 this
14 article.

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

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

20 **(5) “COMMUNITY-BASED HOUSING” MEANS RESIDENTIAL HOUSING**
21 **THAT IS NOT IN AN INSTITUTIONAL ENVIRONMENT.**

22 **(6) “COMMUNITY-BASED LONG-TERM SERVICES AND SUPPORTS”**
23 **MEANS LONG-TERM SERVICES AND SUPPORTS THAT SERVE INDIVIDUALS IN THE**
24 **INDIVIDUALS’ HOMES AND COMMUNITIES AND NOT IN INSTITUTIONS.**

25 **[(5)] (7)** “Health related care and services” includes:

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

27 (ii) Medication administration;

28 (iii) Inhalation therapy;

29 (iv) Bladder and catheter management;

1 (v) Assistance with suctioning; or

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

3 **[(6)] (8)** “Home health care services” means those services defined in §
4 19–401 of this article and in 42 C.F.R. 440.70.

5 **(9) “LONG–TERM SERVICES AND SUPPORTS” HAS THE MEANING**
6 **STATED IN § 10–1001 OF THE HUMAN SERVICES ARTICLE.**

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

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

15 **[(9)] (12)** “Waiver” means a home– and community–based services waiver
16 under § 1915(c) of the federal Social Security Act, submitted by the Department to the
17 Centers for Medicare and Medicaid Services.

18 **[(10)] (13)** “Waiver services” means the services covered under an approved
19 waiver that:

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

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

23 (iii) Assure the waiver participant’s health and safety in the
24 community; and

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

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

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

31 (ii) Rehabilitation services; or

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

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

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

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

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

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

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

16 **(2) A REQUIREMENT THAT AT LEAST HALF THE WAIVER**
17 **PARTICIPANTS LIVE IN COMMUNITY-BASED HOUSING IMMEDIATELY BEFORE THE**
18 **PARTICIPANT RECEIVES WAIVER SERVICES;**

19 **[(2)] (3)** A limit on annual waiver participation based on State General
20 Fund support as provided in the budget bill;

21 **[(3)] (4)** Financial eligibility criteria which include:

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

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

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

31 **[(4)] (5)** Waiver services that include at least the following:

32 (i) Assisted living services;

- 1 (ii) Case management services;
- 2 (iii) Family training;
- 3 (iv) Dietitian and nutritionist services;
- 4 (v) Medical day care services; and
- 5 (vi) Senior center plus services;

6 **[(5)] (6)** The opportunity to provide eligible individuals with waiver
 7 services under this section as soon as they are available without waiting for placement slots
 8 to open in the next fiscal year;

9 **[(6)] (7)** An increase in participant satisfaction;

10 **[(7)] (8)** The forestalling of functional decline;

11 **[(8)] (9)** A reduction in Medicaid expenditures by reducing utilization of
 12 services; and

13 **[(9)] (10)** The enhancement of compliance with the decision of the United
 14 States Supreme Court in the case of *Olmstead v. L.C.* (1999) by offering cost-effective
 15 community-based services in the most appropriate setting.

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

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

21 **(F) (1) THE DEPARTMENT'S WAIVER SHALL REQUIRE THE DEPARTMENT**
 22 **TO IMPLEMENT A WAITING LIST FOR INDIVIDUALS ELIGIBLE FOR A WAIVER UNDER**
 23 **SUBSECTION (B) OF THIS SECTION THAT:**

24 **(I) USES VALID TESTING INSTRUMENTS TO ASSESS THE NEED**
 25 **FOR SERVICES ON AN OBJECTIVE SCALE;**

26 **(II) ALLOCATES SERVICES ACCORDING TO DOCUMENTED NEED;**
 27 **AND**

28 **(III) PRIORITIZES SERVICES AND SUPPORTS FOR INDIVIDUALS**
 29 **WITH THE GREATEST DOCUMENTED NEEDS.**

1 **(2) THE DEPARTMENT SHALL PROVIDE INDIVIDUALS ON THE**
2 **WAITING LIST A COPY OF THE DEPARTMENT'S WAITING LIST POLICIES AND SHALL**
3 **INFORM THOSE INDIVIDUALS OF:**

4 **(I) THE INDIVIDUAL'S STATUS ON THE WAITING LIST;**

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

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

9 **(IV) WHAT SERVICES AND SUPPORTS THE INDIVIDUAL IS LIKELY**
10 **TO RECEIVE.**

11 **(3) THE DEPARTMENT SHALL SEND A COPY OF THE WAITING LIST**
12 **POLICIES TO A MEMBER OF THE PUBLIC ON REQUEST.**

13 **[(f)] (G)** The Department, in consultation with representatives of the affected
14 industry **[and]**, advocates for waiver candidates, **AND THE DEPARTMENT OF**
15 **DISABILITIES**, and with the approval of the Department of Aging, shall adopt regulations
16 to implement this section.

17 **Article – Human Services**

18 7–132.

19 (a) The State Disabilities Plan shall provide for the coordination of support
20 services that:

21 (1) ensure compliance with the federal Americans with Disabilities Act and
22 other relevant federal and State provisions intended to protect the civil rights of individuals
23 with disabilities **OF ALL AGES**;

24 (2) are necessary for individuals with disabilities **OF ALL AGES** to achieve
25 maximum participation in the mainstream of the community in the most integrated setting
26 possible; and

27 (3) address, on a statewide basis, the improvement of:

28 (i) the capacity of communities to support individuals with
29 disabilities **OF ALL AGES** with personal attendant care and other long-term care options
30 that are self-directed;

- 1 (ii) the availability of accessible, integrated, and affordable housing
2 options;
- 3 (iii) reliable transportation options;
- 4 (iv) employment and training options, including self-employment
5 and noncongregant competitive opportunities available in an integrated environment in
6 which there are individuals **OF ALL AGES** with and without disabilities;
- 7 (v) somatic and behavioral health options;
- 8 (vi) accessible and universally designed technology;
- 9 (vii) support services for children, youth, and their families to enable
10 them to achieve successful learning;
- 11 (viii) family support services, including respite care; and
- 12 (ix) crime control, public safety, and correctional services that
13 appropriately take into account the needs and rights of individuals with disabilities **OF ALL**
14 **AGES**.

15 (b) The State Disabilities Plan shall assess the provision of and resources for
16 support services for individuals with disabilities **OF ALL AGES**.

17 10-1001.

18 (a) In this subtitle the following words have the meanings indicated.

19 (c) “Long-term services and supports” means the broad range of assistance
20 needed by older adults and individuals with disabilities.

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

22 (a) The Maryland Department of Health, in consultation with representatives of
23 the affected industry, advocates for waiver candidates, and the Department of Disabilities,
24 and with the approval of the Department of Aging, shall conduct a survey to determine how
25 many individuals in the State are eligible for a waiver under § 15-132 of the Health –
26 General Article.

27 (b) On or before July 1, 2019, the Maryland Department of Health shall report on
28 the results of the survey to the Governor and, in accordance with § 2-1246 of the State
29 Government Article, the General Assembly.

30 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
31 1, 2018.