

SENATE BILL 28

O3, J1

(PRE-FILED)

2lr1201
CF HB 80

By: **Senators Kelley, Augustine, Beidle, ~~and Feldman~~ Benson, Feldman, and Klausmeier**

Requested: November 1, 2021

Introduced and read first time: January 12, 2022

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 17, 2022

CHAPTER _____

1 AN ACT concerning

2 **Home- and Community-Based Services Waiver – Participation and Applications**

3 FOR the purpose of altering the required contents of the home- and community-based
4 services waiver submitted by the Maryland Department of Health to the Centers for
5 Medicare and Medicaid Services; requiring the Department to send an application to
6 a certain number of individuals each month, if the Department maintains a waiting
7 list or registry for the waiver; requiring the Department to apply to the Centers for
8 Medicare and Medicaid Services for an amendment to the home- and
9 community-based services waiver; and generally relating to the home- and
10 community-based services waiver.

11 BY repealing and reenacting, with amendments,
12 Article – Health – General
13 Section 15–132
14 Annotated Code of Maryland
15 (2019 Replacement Volume and 2021 Supplement)

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

18 **Article – Health – General**

19 15–132.

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

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

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

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

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

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

11 (ii) Medication administration;

12 (iii) Inhalation therapy;

13 (iv) Bladder and catheter management;

14 (v) Assistance with suctioning; or

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

16 (6) “Home health care services” means those services defined in § 19–401
17 of this article and in 42 C.F.R. 440.70.

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

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

26 (9) “Waiver” means a home– and community–based services waiver under
27 § 1915(c) of the federal Social Security Act, submitted by the Department to the Centers for
28 Medicare and Medicaid Services.

29 (10) “Waiver services” means the services covered under an approved waiver
30 that:

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

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

4 (iii) Assure the waiver participant's health and safety in the
5 community; and

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

8 (b) (1) If authorized by the Centers for Medicare and Medicaid Services, an
9 individual shall be determined medically eligible to receive services if the individual
10 requires:

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

12 (ii) Rehabilitation services; or

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

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

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

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

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

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

27 (1) **[An initial] A cap on waiver participation [at] OF NOT FEWER THAN**
28 **7,500 individuals;**

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

32 (3) Financial eligibility criteria which include:

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

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

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

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

11 (i) Assisted living services;

12 (ii) Case management services;

13 (iii) Family training;

14 (iv) Dietitian and nutritionist services;

15 (v) Medical day care services; and

16 (vi) Senior center plus services;

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

20 (6) An increase in participant satisfaction;

21 (7) The forestalling of functional decline;

22 (8) A reduction in Medicaid expenditures by reducing utilization of
23 services; and

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

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

29 (e) **(1) (I) IF THE DEPARTMENT MAINTAINS A WAITING LIST OR**
30 **REGISTRY, EACH MONTH THE DEPARTMENT SHALL SEND A WAIVER APPLICATION:**

1 **1. IF THERE ARE FEWER THAN 600 INDIVIDUALS ON THE**
2 **WAITING LIST OR REGISTRY, TO ALL INDIVIDUALS ON THE WAITING LIST OR**
3 **REGISTRY; AND**

4 **2. IF THERE ARE 600 OR MORE INDIVIDUALS ON THE**
5 **WAITING LIST OR REGISTRY, TO AT LEAST 600 INDIVIDUALS ON THE WAITING LIST**
6 **OR REGISTRY.**

7 **(II) A WAIVER APPLICATION SENT UNDER SUBPARAGRAPH (I)**
8 **OF THIS PARAGRAPH SHALL STATE CLEARLY AND CONSPICUOUSLY THAT:**

9 **1. THE APPLICANT MUST SUBMIT THE APPLICATION**
10 **WITHIN 6 WEEKS AFTER RECEIVING THE APPLICATION; AND**

11 **2. THE APPLICANT IS REQUIRED TO MEET ALL OF THE**
12 **ELIGIBILITY CRITERIA FOR PARTICIPATION IN THE WAIVER WITHIN 6 MONTHS**
13 **AFTER SUBMITTING THE APPLICATION.**

14 **(2)** If a person determined to be eligible to receive waiver services under
15 this section desires to receive waiver services and an appropriate placement is available,
16 the Department shall authorize the placement.

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 on or before October 31, 2022,
21 and thereafter as necessary, the Maryland Department of Health shall apply to the Centers
22 for Medicare and Medicaid Services for an amendment to the home– and community–based
23 waiver under § 1915(c) of the federal Social Security Act to increase the waiver cap size to
24 be consistent with Section 1 of this Act.

25 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2022.