

**Department of Legislative Services**  
 Maryland General Assembly  
 2022 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

House Bill 80 (Delegate Cullison, *et al.*)  
 Health and Government Operations

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

This bill requires the Medicaid Home- and Community-Based Services Waiver (Community Options Waiver) to include a cap on participation and a plan for waiver participation of at least 7,500 individuals. If the Maryland Department of Health (MDH) maintains a waiting list/registry for the waiver, each month MDH must send a waiver application to at least 600 individuals on the waiting list/registry (or all individuals if there are less than 600). A waiver application must state clearly and conspicuously that the applicant (1) must submit the application within six weeks of receipt and (2) has to meet all eligibility criteria for waiver participation within six months of application submission. By October 31, 2022, MDH must apply to the federal Centers for Medicare and Medicaid Services for an amendment to increase the waiver cap size to least 7,500 individuals.

**Fiscal Summary**

**State Effect:** Medicaid expenditures increase by *at least* \$2.9 million (50% general funds, 50% federal funds) in FY 2023. Future years reflect annualization, growth in enrollment, and ongoing costs. Federal fund revenues increase accordingly. **This bill increases the cost of an entitlement program beginning in FY 2023.**

(\$ in millions)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
FF Revenue	\$1.46	\$7.61	\$14.23	\$20.86	\$27.49
GF Expenditure	\$1.46	\$7.61	\$14.23	\$20.86	\$27.49
FF Expenditure	\$1.46	\$7.61	\$14.23	\$20.86	\$27.49
Net Effect	(\$1.46)	(\$7.61)	(\$14.23)	(\$20.86)	(\$27.49)

*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

### Current Law:

#### *Medicaid Home- and Community-Based Services*

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. 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.

#### *Medicaid Community Options Waiver*

The Community Options Waiver 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) enhancement of compliance with *Olmstead v. L.C.* (1999) by offering cost-effective, community-based services in the most appropriate setting.

MDH advises that, as of January 11, 2022, there were a total of 6,348 approved Community Options Waiver slots, of which approximately 4,286 are filled. As of November 5, 2021, there were 21,238 individuals on the waiver registry, with new individuals joining the registry annually (5,203 in 2019; 3,358 in 2020; and 3,622 in 2021). MDH advises that it currently contacts 300 individuals on the registry each month (3,600 annually). Applicants are currently permitted nine weeks to return a waiver application, compared with six weeks as proposed under the bill. The fiscal 2022 budget (via Supplemental Budget No. 5) includes \$10.6 million (53% federal funds, 47% general funds) for waiver slot expansion and administrative support (six full-time positions).

#### *The Hilltop Institute's Joint Chairmen's Report Response*

The 2020 *Joint Chairmen's Report* directed MDH and The Hilltop Institute, in consultation with stakeholders, to prepare a cost-benefit analysis of expanding access to long-term care services through home- and community-based waivers. Hilltop reviewed individuals on the Community Options Waiver registry and found that 40% of individuals were estimated to

meet nursing facility level of care. When financial eligibility was also taken into consideration, 16% of individuals on the registry were estimated to qualify for the waiver.

As part of the study, Hilltop was asked to estimate the cost associated with waiver slot expansion, specifically, the additional (net) costs associated with accessing services (both home- and community-based services and regular Medicaid services) through additional waiver slots, while recognizing cost avoidance from individuals on the registry who use Medicaid because they are already qualified or subsequently become Medicaid-eligible. Hilltop noted that 46.4% of individuals on the waiver registry were already enrolled in Medicaid. Hilltop calculated the estimated cost of an individual on the registry and in the waiver, then adjusted the costs to reflect specific factors, including an occupancy rate of 76% for waiver slots (*i.e.*, an additional waiver slot is likely to be occupied approximately three-fourths of the time) and the requirement that individuals must meet a nursing facility level of care to participate in the waiver. Hilltop ultimately estimated that the State share of the annual net cost for each additional waiver slot is between \$10,000 and \$12,500 (or total costs of \$20,000 to \$25,000 per slot). This estimate is significantly lower than the difference between an individual’s costs while enrolled in the waiver compared with costs incurred while on the registry.

**State Fiscal Effect:** Under the bill, MDH must send a waiver application (that clearly specifies certain information) to *at least* 600 individuals on the registry each month. As MDH currently sends 300 letters per month, this estimate assumes that MDH must send 300 additional letters per month.

Medicaid expenditures (50% general funds, 50% federal funds) increase by *at least* \$2.9 million in fiscal 2023, which reflects the bill’s October 1, 2022 effective date. This reflects the cost of hiring six additional full-time positions to contact individuals on the registry and invite them to apply, accept applications, process technical and financial eligibility, preauthorize services for waiver participants once they are enrolled, and provide ongoing services related to waiver participation to the additional enrollees. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses for the new personnel as well as the costs associated with medical eligibility assessments and provision of waiver services.

	<u><b>FY 2023</b></u>	<u><b>FY 2024</b></u>
New/Filled Positions	6.0	-
Waiver Services	\$1,890,000	\$13,500,000
Medical Eligibility Assessments	608,517	1,205,443
Salaries and Fringe Benefits	385,677	503,165
One-time Start-up Expenses	39,288	-
Ongoing Operating Expenses	<u>4,770</u>	<u>6,392</u>
<b>Total GF/FF Expenditures</b>	<b>\$2,928,252</b>	<b>\$15,215,000</b>

The information and assumptions used in calculating the estimate are stated below:

- Medicaid hires six additional personnel who are in place on October 1, 2022, to contact individuals on the registry, invite them to apply, accept and process applications, and provide ongoing services.
- Medicaid mails an additional 300 letters per month to individuals on the waiting list.
- Based on historical data, 60% of these individuals (180) submit a waiver application each month.
- Each applicant 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 annually.
- Of the 180 waiver applicants each month, approximately 26.7% (48) will be eligible for and enroll in the waiver.
- In fiscal 2023, a total of 2,700 letters are mailed, 1,620 applications are received (and an associated 1,620 medical eligibility assessments are performed), and 432 individuals are deemed eligible for and enroll in the waiver.
- The estimated annual net cost to Medicaid per waiver slot is \$22,500 (this represents the midpoint of Hilltop's estimated \$20,000 to \$25,000 annual cost and differs from prior years' fiscal and policy note estimates, which used the full cost of waiver services).
- Federal fund matching revenues cover one-half of the costs.
- Medicaid can apply for a federal amendment to the home- and community-based waiver to increase the waiver cap size to be at least 7,500 individuals using existing budgeted resources, and the amendment is approved.

Future year expenditures reflect continued outreach at a rate of 300 additional letters per month, annual assessments of medical eligibility of the new enrollees under the bill, the cumulative impact of increased enrollment on monthly service costs for waiver services, full salaries with annual increases and employee turnover, and increases in ongoing operating expenses.

To the extent that Medicaid must fill all 7,500 slots beginning in fiscal 2023, Medicaid expenditures increase by a *significant* amount to reflect additional medical eligibility assessments (a total of \$5.8 million in fiscal 2023), enrollment of approximately 3,214 individuals into the waiver (at an annual cost for waiver services of \$72.3 million by full enrollment), and additional contractual staff costs to support outreach and enrollment.

The fiscal 2023 budget includes \$12.6 million (\$5.6 million in general funds) to support an additional 400 waiver slots. Furthermore, six vacant positions are transferred to Medicaid to assist with waiver enrollment. Accordingly, there may be sufficient funding in the budget to cover the costs to comply with the bill in fiscal 2023.

**Local Fiscal Effect:** LHD revenues increase by an estimated \$608,517 in fiscal 2023, increasing to \$2.0 million by fiscal 2027 from reimbursement to conduct medical eligibility assessments for waiver applicants and enrollees. LHD expenditures also increase to conduct the assessments.

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

**Additional Comments:** Compared with current MDH practice, the bill reflects a doubling of outreach efforts to enroll individuals in the Community Options Waiver. Based on enrollment achieved through *current* MDH outreach (300 letters per month) and those under the bill (an additional 300 letters per month), full enrollment in the currently approved 6,248 waiver slots could occur as early as the second quarter of fiscal 2025. Enrollment of an additional 3,214 individuals (a full 7,500 waiver enrollees) could occur as soon as the second quarter of fiscal 2026. Accordingly, the requirement to apply for an amendment to increase the waiver cap (and any associated delay in approval) does not affect expenditures in fiscal 2023 or 2024.

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### Additional Information

**Prior Introductions:** Similar legislation, HB 1163 of 2020, received a hearing in the House Health and Government Operations Committee, but no further action was taken. Its cross file, SB 642, passed in the Senate with amendments and was referred to the House Health and Government Operations Committee, but no further action was taken.

**Designated Cross File:** SB 28 (Senator Kelley, *et al.*) - Finance.

**Information Source(s):** The Hilltop Institute; Maryland Department of Aging; Maryland Department of Health; Department of Legislative Services

**Fiscal Note History:**  
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Revised - Amendment(s) - April 11, 2022

Revised - Clarification - April 11, 2022

Revised - Budget Information - June 7, 2022

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