

SENATE BILL 1057

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CF HB 1176

By: **Senator Kramer**

Introduced and read first time: February 2, 2024

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Home- and Community-Based Services Waiver – Eligibility**

3 FOR the purpose of altering the financial eligibility criteria for the home- and
4 community-based services waiver submitted by the Maryland Department of Health
5 to the Centers for Medicare and Medicaid Services to include certain categorically
6 needy individuals and a certain community spouse resource allowance; requiring the
7 Department to adopt regulations to establish a timeline within which the
8 Department is required to approve or deny the application of an applicant; requiring
9 the Department to apply to the Centers for Medicare and Medicaid Services for an
10 amendment to the home- and community-based services waiver on or before a
11 certain date, and thereafter as necessary, to expand the financial eligibility criteria
12 to be consistent with a provision of law; and generally relating to the home- and
13 community-based services waiver.

14 BY repealing and reenacting, with amendments,
15 Article – Health – General
16 Section 15–132
17 Annotated Code of Maryland
18 (2023 Replacement Volume)

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

21 **Article – Health – General**

22 15–132.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

8 (ii) Medication administration;

9 (iii) Inhalation therapy;

10 (iv) Bladder and catheter management;

11 (v) Assistance with suctioning; or

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

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

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

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

23 (9) “Waiver” means a home- and community-based services waiver under
24 § 1915(c) of the federal Social Security Act, submitted by the Department to the Centers for
25 Medicare and Medicaid Services.

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

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

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

1 (iii) Assure the waiver participant's health and safety in the
2 community; and

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

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

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

9 (ii) Rehabilitation services; or

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

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

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

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

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

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

24 (1) A cap on waiver participation of not fewer than 7,500 individuals;

25 (2) A plan for waiver participation of not fewer than 7,500 individuals;

26 (3) Financial eligibility criteria which include:

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

30 (ii) Medically needy individuals using services provided by a nursing
31 facility under the current federal and State medical assistance eligibility criteria governed

1 by regulations adopted by the Department and § 1919 of the federal Social Security Act;
2 [and]

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

5 (IV) CATEGORICALLY NEEDED INDIVIDUALS WITH AN INCOME
6 DISREGARD UP TO 300% OF THE SUPPLEMENTAL SECURITY INCOME MONTHLY
7 BENEFIT AMOUNT; AND

8 (V) A COMMUNITY SPOUSE RESOURCE ALLOWANCE
9 CALCULATED BY ASSETS OWNED AS OF THE FIRST DAY OF THE MONTH OF
10 CONTINUOUS INSTITUTIONALIZATION FOR 30 OR MORE DAYS, OR AS OF THE FIRST
11 DAY OF THE MONTH IN WHICH THE APPLICANT RECEIVES AN APPLICATION FOR
12 WAIVER SERVICES FROM THE DEPARTMENT;

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

14 (i) Assisted living services;

15 (ii) Case management services;

16 (iii) Family training;

17 (iv) Dietitian and nutritionist services;

18 (v) Medical day care services; and

19 (vi) Senior center plus services;

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

23 (6) An increase in participant satisfaction;

24 (7) The forestalling of functional decline;

25 (8) A reduction in Medicaid expenditures by reducing utilization of
26 services; and

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

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

3 (e) (1) (i) If the Department maintains a waiting list or registry, each
4 month the Department shall send a waiver application:

5 1. If there are fewer than 600 individuals on the waiting list
6 or registry, to all individuals on the waiting list or registry; and

7 2. If there are 600 or more individuals on the waiting list or
8 registry, to at least 600 individuals on the waiting list or registry.

9 (ii) A waiver application sent under subparagraph (i) of this
10 paragraph shall state clearly and conspicuously that:

11 1. The applicant must submit the application within 6 weeks
12 after receiving the application; and

13 2. The applicant is required to meet all of the eligibility
14 criteria for participation in the waiver within 6 months after submitting the application.

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

18 (f) The Department, in consultation with representatives of the affected industry
19 and advocates for waiver candidates, and with the approval of the Department of Aging,
20 shall adopt regulations to implement this section, **INCLUDING REGULATIONS THAT**
21 **ESTABLISH A TIMELINE WITHIN WHICH THE DEPARTMENT IS REQUIRED TO**
22 **APPROVE OR DENY THE APPLICATION OF AN APPLICANT.**

23 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 31, 2024,
24 and thereafter as necessary, the Maryland Department of Health shall apply to the Centers
25 for Medicare and Medicaid Services for an amendment to the home- and community-based
26 waiver under § 1915(c) of the federal Social Security Act to expand the eligibility for waiver
27 services consistent with Section 1 of this Act.

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2024.