

**HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE  
HOUSE BILL 0080: HOME- AND COMMUNITY-BASED SERVICES WAIVER -  
PARTICIPATION AND APPLICATIONS**

**FEBRUARY 09, 2022**

**POSITION: SUPPORT**

Thank you, Madam Chair Pendergrass and Committee Members, for the opportunity to provide testimony on House Bill 0080: Home- and Community-Based Services Waiver - Participation and Applications. Disability Rights Maryland (DRM – formerly Maryland Disability Law Center) is the federally designated Protection and Advocacy agency in Maryland, mandated to advance the civil rights of people with disabilities. DRM works to increase opportunities for Marylanders with disabilities to be integrated in their communities, live independently and access high-quality, affordable health care.

House Bill 0080 is an important step in aiding the thousands of Marylanders with disabilities who are currently unable to access the medically necessary care in their homes they are entitled to under the Home and Community-Based Services Waiver (hereinafter “Waiver”). This Bill will ensure that at least 7,500 eligible individuals participate in the Waiver. For FY 2022 there are only 6,348 unduplicated Waiver slots, but as of November 01, 2021, there were only 4,181 Waiver participants, leaving 2,167 unused slots.

This Bill also requires the Maryland Department of Health (MDH) to maintain a waiting list and send applications to 6000 individuals on the waiting list or registry every month if there are more than 600 individuals on the list. MDH currently maintains a registry list and as of November 01, 2021, there were 21,113 individuals on the Waiver registry. Even with requiring 600 applications to go out monthly, given the current registry list, it will take MDH approximately 3 years to work through the entire registry. In a study prepared for MDH in December 2020, Hilltop estimated that 3,088 (16%) of the 19,804 individuals on the Waiver registry, as of September 2020, would be eligible if invited to apply. Given the large number of potentially eligible individuals on the registry and the overuse of the registry we need MDH to prioritize winding down the registry.

There was overwhelming support of the Senate version of this Bill (SB0028), at its Finance hearing on January 25, 2022, with MDH filing the only written opposition. MDH includes in its opposition that the Center for Medicare and Medicaid Services (CMS) has only currently approved MDH for 6,348 participant slots, so if this Bill is passed MDH will need to submit a waiver amendment to CMS. However, MDH submitted a new Waiver application to CMS in 2021, which has yet to be approved.<sup>1</sup> DRM filed comments with MDH regarding their draft Waiver application, and in their response provided the following proposed slot numbers:

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<sup>1</sup> <https://health.maryland.gov/mmcp/waiverprograms/pages/home.aspx>; <https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/81956>

Waiver Year	C
1 - FY2022	5,489
2 - FY2023	5,543
3 - FY2024	5,599
4 - FY2025	5,655
5 - FY2026	5,711

MDH's proposed Waiver slots is a reduction of 859 slots. The proposed number of slots only provides for minimal growth of 222 slots over 5 years with only 5,711 slots by Waiver Year 5 (2025), or 637 slots. Unfortunately, MDH has continuously been unsupportive of expanding, or even maintain, Waiver slots, despite the overwhelming need.

Furthermore, the American Rescue Plan Act (ARPA) was signed into law on March 11, 2021, and provides a 10% increase in funding for Home and Community-Based Services (HCBS), that must supplement and not supplant HCBS programs and services. Maryland would receive approximately \$234,418,000 in additional federal funding for HCBS. Maryland should take advantage of this additional federal funding to meet the high demand for the Waiver and expand waiver slots. MDH should be directing ARPA funds as well as requesting additional state funding to expand the Waiver.

Health care is a critical public service, especially given the current public health emergency. People with intellectual and developmental disabilities are three times more likely to become infected with COVID-19 and die than those without disabilities.<sup>2</sup> The lack of accessible and affordable health care leaves many people with disabilities at risk of homelessness, institutionalization, and incarceration, and remains a significant barrier to people with disabilities moving from institutional settings to the community.<sup>3</sup> Maryland has the 12th highest percentage of working age adults with disabilities living in nursing facilities at 1.30% and 4,657.<sup>4</sup> Maryland is ranked 21<sup>st</sup> by percentage of adults age 65 and over living in nursing facilities at 7.58% and 21,890.<sup>5</sup> The current public health emergency has further highlighted issues with nursing facilities, with 33-75% of COVID-19 deaths occurring in these congregate settings in different states.<sup>6</sup> Alternative models for community living with supports and expanding existing programs

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<sup>2</sup> Risk Factors for COVID-19 Mortality among Privately Insured Patients, A FAIR Health White Paper in Collaboration with the West Health Institute and Marty Makary, MD, MPH, from Johns Hopkins University School of Medicine, November 11, 2020.

<https://s3.amazonaws.com/media2.fairhealth.org/whitepaper/asset/Risk%20Factors%20for%20COVID-19%20Mortality%20among%20Privately%20Insured%20Patients%20-%20A%20Claims%20Data%20Analysis%20-%20A%20FAIR%20Health%20White%20Paper.pdf>.

<sup>3</sup> See MARYLAND DEPARTMENT OF DISABILITIES, MARYLAND STATE DISABILITIES PLAN, 2016-2019 12-13 (2016), available at [http://mdod.maryland.gov/pub/Documents/post%20sdp%20\(1\).pdf](http://mdod.maryland.gov/pub/Documents/post%20sdp%20(1).pdf).

<sup>4</sup> Fact Sheet: Percent of Working-Age People with Disabilities Still Living in Nursing Homes, ADA Participation Action Research Consortium (ADA PARC).

<https://adata.org/sites/adata.org/files/files/PARC%20NH%20percent%20FactSheet.pdf>.

<sup>5</sup> Fact Sheet: Percent of Older Adults with Disabilities Living in Nursing Homes ADA Participation Action Research Consortium (ADA PARC).

<https://adata.org/sites/adata.org/files/files/NH%2065%20Percent%20FactSheet.pdf>.

<sup>6</sup> Chidambaram, P. (2020, March 13). Data note: How might Coronavirus affect residents in nursing facilities?. Kaiser Family Foundation. <https://www.kff.org/coronavirus-covid-19/issue-brief/data-note-how-mightcoronavirus-affect-residents-in-nursing-facilities/>.

are needed to further the goals of and compliance with the *Olmstead* decision and community integration mandate of the Americans with Disabilities Act (ADA).<sup>7</sup>

**For these reasons, DRM strongly supports House Bill 0080.**

Respectfully,

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<sup>7</sup> *Olmstead v. L.C.*, 527 U.S. 581 (1999); 42 U.S.C. § 12101.