

**MARYLAND-D.C. CHAPTER OF THE  
NATIONAL ACADEMY OF ELDER LAW ATTORNEYS  
(MD NAELA)**

**DATE:** Wednesday, February 9, 2022

**SUBJECT:** House 80: Home- and Community-Based Services Waiver - Participation and Applications

**COMMITTEE:** House Health and Government Operations Committee  
The Honorable Chair, Shane Pendergrass

**POSITION:** **SUPPORT**

Members of the National Academy of Elder Law Attorneys (NAELA) are attorneys who are experienced and trained in working with the legal problems of aging Americans and individuals of all ages with special needs. NAELA's mission is to educate, inspire, serve, and provide community to attorneys with practices in elder and special needs law.

Elder law and special needs planning includes helping such persons and their families with planning for incapacity and long-term care, Medicaid and Medicare coverage (including coverage of nursing home and home care), health and long-term care insurance, and health care decision-making. It also includes drafting of special needs and other trusts, the selection of long-term care providers, home care and nursing home problem solving, retiree health and income benefits, retirement housing, and fiduciary services or representation.

**House Bill 80** *“alters the required contents of the home- and community-based services waiver submitted by the Maryland Department of Health to the Centers for Medicare and Medicaid Services; requires the Department to send an application to a certain number of individuals each month, if the Department maintains a waiting list or registry for the waiver.”*

**Background:**

The Maryland Medicaid Home & Community Based Services Options Waiver (HCBOW) program can provide needed services to Marylanders with disabilities at home, such as someone to assist them in bathing and dressing, if they are unable to afford them, **but it has an almost 8-year, 20,000+ person waiting list (“the Registry”)**. This waiting list exists because the HCBOW is not required to meet the demand for services.

When the Maryland Department of Health (MDH) re-adjusts HCBOW program availability every few years, it does not count eligible people on the waiting list. In 2016, the MDH actually reduced program availability DESPITE the size of the waiting list.

There is no way for Marylanders living at home to bypass the 8-year waiting list and stay at home, except by unnecessarily entering a nursing home. While on the Registry, registrants are also in the dark for 8 years over where they are on the waiting list.

### **Current Landscape:**

Further, as evidenced by the large waiting list, Marylanders want home and community services. The number of older Marylanders is increasing. Of the nearly 6.1 million people in Maryland in 2020, 22.62% were age 60 or over. This percentage is expected to increase to 26.57% of Maryland's projected population of 6.7 million by the year 2040. Individuals 85 and over are the fastest growing segment of the population. This cohort will grow in number, statewide, from 122,092 in 2020 to 314,961 by the year 2045, a 158% increase.

As the US population ages, the number of people needing LTSS will rise. On average, 52 percent of people who turn 65 today will develop a severe disability that will require LTSS at some point. The average duration of need, over a lifetime, is about two years.  
<https://www.aarp.org/content/dam/aarp/ppi/2017-01/Fact%20Sheet%20Long-Term%20Support%20and%20Services.pdf>

Home care-giving falls disproportionately on women. "Gender disparities in caregiving persisted: Wives represented 57 percent of all caregiving spouses in 2004, as they did in 1994, while daughters represented almost two-thirds of all caregiving children in both years."  
<https://assets.aarp.org/rgcenter/ppi/ltc/2010-09-caregiving.pdf>

### **Home care is less expensive**

In a study prepared for MDH in December 2020 "**Expanding Access to Long -Term Services and Supports through Home and Community -Based Services**", Hilltop estimates that the cost to the state of providing CO Waiver services to the 3,088 individuals on the registry who would likely meet financial eligibility and NFLOC requirements would be about \$31-\$39 million annually. The state cost for each additional CO Waiver enrollee is estimated to be about \$10,000-\$12,500 per year (\$20,000 - \$25,000 total funds). These estimates include nursing facility costs avoided. Estimates are for state costs only and do not include federal Medicaid matching funds

Notwithstanding our own well-documented experience with cost-savings and the experience of other states, we continue to severely limit and to underfund our Home and Community-Based Waiver slots. Most recently, the Department of Health actually reduced the number of available slots for home-based services (see attached appendix)

### **House Bill 80 will solve these issues by:**

- Requiring a cap on waiver participation of not fewer than 7,500;
- Requiring the Department to establish a plan for waiver participation of not fewer than 7,500;
- Requiring the Department to send a waiver application to at least 600 individuals on the waiver waitlist or registry per month
- Requiring the Department to clearly and conspicuously state when the application must be submitted and when eligibility criteria must be met.

**For these reasons, we respectfully ask that you give a favorable report to House Bill 80.**

Please contact Elena Sallitto, 410-268-9246, [elena@Stavelylaw.com](mailto:elena@Stavelylaw.com); or Morris Klein, 301-652-4462, [morrisklein@morrisklein.com](mailto:morrisklein@morrisklein.com) with any questions.

**APPENDIX 1: Home and Community Based Waiver Slots over time:**

In the original authorization application covering the years 2016 - 2021, the Department submitted the following request:

**Table B-3-a (2016)**

Waiver Year	Unduplicated Number of Participants
Waiver Year 1	4585
Waiver Year 2	5094
Waiver Year 3	5659
Waiver Year 4	6287
Waiver Year 5	7280

(Waiver Amendment approved July 1, 2016, Appendix B-3,a. Unduplicated Number of Participants, at pg. 32)

In 2019, the Department amended those numbers when it adopted a triage system to negotiate the 20,000-person waiting list for services. Without any indication to the public that it was seeking a change, the Department submitted the following to CMS for approval:

**Table B-3-a (2019)**

Waiver Year	Unduplicated Number of Participants
Waiver Year 1	4585
Waiver Year 2	5094
Waiver Year 3	4800
Waiver Year 4	5520
Waiver Year 5	6348

(Appendix B-3, a. Unduplicated Number of Participants, at pg. 35) Amendment request dated: 2019.

Its current proposal reduces slots even further. The current submission provides for the following:

**Table B-3-a (2021)**

Waiver Year	Unduplicated Number of Participants
Waiver Year 1	3500
Waiver Year 2	3550
Waiver Year 3	3600
Waiver Year 4	3650
Waiver Year 5	3700

Source: Current proposal at p. 32

**Per MDH Letter of March 31, 2021 in response to NAELA Comments:**

“The Unduplicated Number of Participants identified in the CO Waiver Renewal application posted online was incorrect the correct figures are [below]. These figures were calculated based on actual trends over the last five years of waiver enrollment. The waiver application will be updated to reflect the figures listed [below].”

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

**To:** Chair and Members of the House Health and Government Operations Committee

**From:** Maryland State Bar Association Elder Law and Disability Rights Section

**Date:** February 9, 2022

**Subject:** HB 80: Home and Community-Based Services Waiver - Participation and Applications

**Position:** Favorable

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The Elder Law and Disability Rights Section of the Maryland State Bar Association supports HB 80: Home and Community-Based Services Waiver - Participation and Applications

The Elder Law and Disability Rights Section of the Maryland State Bar Association is an attorney organization whose 579 members represent primarily senior and disabled adults.

The legislation requires utilization of all of the 7,500 slots originally legislated for the waiver program and increases the number of slots to be offered each month to individuals on the waiting list.

HB 80 is sorely needed for the following reasons:

- Marylanders in need of help with their activities of daily living dearly want to receive such care in the community. Yet, the Medicaid program for such services has a waiting list of over 20,000 persons resulting in a delay of up to 8 years to become eligible. People on the waiting list either die or resort to care in a nursing home instead.
- Maryland prides itself in progressive health care policies, and this legislation corrects one area where Maryland lags behind other states. Maryland's home and community based program has one of the largest waiting lists in the country. A survey by the Kaiser Family Foundation based on the most recent available information found that only Texas, Florida, Ohio, and Louisiana had bigger wait lists than Maryland. (<https://www.kff.org/report-section/key-questions-about-medicaid-home-and-community-based-services-waiver-waiting-lists-appendix-tables/>).
- The cost of home and community based services is less expensive per person than nursing home care.

We urge your Committee to give a favorable report to this legislation.

/s/ Morris Klein, Section Public Policy Committee