

Chapter 738

(Senate Bill 28)

AN ACT concerning

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

FOR the purpose of altering 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; requiring 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; requiring the Department to apply to the Centers for Medicare and Medicaid Services for an amendment to the home- and community-based services waiver; and generally relating to the home- and community-based services waiver.

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

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

Article – Health – General

15–132.

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

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

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

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

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

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

(ii) Medication administration;

- (iii) Inhalation therapy;
- (iv) Bladder and catheter management;
- (v) Assistance with suctioning; or
- (vi) Assistance with treatment of skin disorders and dressings.

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

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

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

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

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

- (i) Are needed and chosen by an eligible waiver participant as an alternative to admission to or continued stay in a nursing facility;
- (ii) Are part of a plan of service approved by the program;
- (iii) Assure the waiver participant’s health and safety in the community; and
- (iv) Cost no more per capita to receive services in the community than in a nursing facility.

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

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

(ii) Rehabilitation services; or

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

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

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

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

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

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

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

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

(3) Financial eligibility criteria which include:

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

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

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

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

(i) Assisted living services;

- (ii) Case management services;
- (iii) Family training;
- (iv) Dietitian and nutritionist services;
- (v) Medical day care services; and
- (vi) Senior center plus services;

(5) The opportunity to provide eligible individuals with waiver services under this section 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) The enhancement of compliance with the decision of the United States Supreme Court in the case of *Olmstead v. L.C.* (1999) by offering cost-effective community-based services in the most appropriate setting.

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

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

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

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

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

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

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

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

(f) The Department, in consultation with representatives of the affected industry and advocates for waiver candidates, and with the approval of the Department of Aging, shall adopt regulations to implement this section.

SECTION 2. AND BE IT FURTHER ENACTED, That on or before October 31, 2022, and thereafter as necessary, the Maryland Department of Health shall apply to the Centers for Medicare and Medicaid Services for an amendment to the home- and community-based waiver under § 1915(c) of the federal Social Security Act to increase the waiver cap size to be consistent with Section 1 of this Act.

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

Enacted under Article II, § 17(c) of the Maryland Constitution, May 29, 2022.