

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 51 Session of 2019

INTRODUCED BY BERNSTINE, RYAN, McNEILL, SCHLOSSBERG, LONGIETTI, MENTZER, PICKETT, HILL-EVANS, WARREN, RAPP, MIZGORSKI, DeLISSIO, DeLUCA, SOLOMON, KEEFER AND GAINNEY, JANUARY 28, 2019

AS REPORTED FROM COMMITTEE ON HEALTH, HOUSE OF REPRESENTATIVES, AS AMENDED, FEBRUARY 5, 2019

AN ACT

1 Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An
2 act to consolidate, editorially revise, and codify the public
3 welfare laws of the Commonwealth," in public assistance,
4 providing for medical assistance deemed eligibility program
5 for home care, home health and older adult daily living
6 center services. <--

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. The act of June 13, 1967 (P.L.31, No.21), known
10 as the Human Services Code, is amended by adding a section to
11 read:

12 Section 443.13. Medical Assistance Deemed Eligibility
13 Program for Home Care, Home Health and Older Adult Daily Living
14 Center Services.--(a) The department shall establish a deemed <--
15 eligibility program for home care services, home health services
16 and older adult daily living center services to prevent the <--
17 unnecessary and costly institutionalization of individuals who
18 are eligible for medical assistance nursing facility services

1 and want to receive home care and assistance with daily living  
2 in a less restrictive setting.

3 (b) The program shall:

4 (1) be designed to provide home care services, home health  
5 services and older adult daily living ~~center~~ services only for <--  
6 individuals who are sixty-five years of age or older and nursing  
7 facility clinically eligible;

8 (2) permit a qualified entity to submit an application for  
9 medical assistance on behalf of individuals to the department;

10 (3) permit an individual who is applying for medical  
11 assistance to declare income and assets on an application form  
12 and attest to the accuracy of the income and assets provided on  
13 the application form; and

14 (4) permit a qualified entity to determine the deemed  
15 eligibility of individuals to receive medical assistance.

16 (c) The following apply:

17 (1) If a qualified entity determines that an individual is  
18 deemed eligible to receive medical assistance under subsection  
19 (b)(4), the individual may begin receiving home care services,  
20 home health services and older adult daily living ~~center~~ <--  
21 services from a medical assistance provider as soon as a  
22 preliminary service plan is developed. As authorized under  
23 Federal law, the department shall apply a final determination of  
24 medical assistance eligibility beginning on the date that a  
25 qualified entity determines that an individual is deemed  
26 eligible for medical assistance under subsection (b)(4).

27 (2) If a qualified entity determines that an individual is  
28 deemed eligible under subsection (b)(4), and the individual is  
29 subsequently determined to be ineligible for home care services,  
30 home health services and older adult daily living ~~center~~ <--

1 services by the department, the medical assistance provider  
2 which provided home care services, home health services and  
3 older adult daily living ~~center~~ services under clause (1) shall <--  
4 not be reimbursed by the Commonwealth for the cost of the home  
5 care services, home health services and older adult daily living  
6 ~~center~~ services provided during the period of deemed <--  
7 eligibility. If the individual provided fraudulent information  
8 under this section, the medical assistance provider may seek  
9 reimbursement from the individual for the cost of home care  
10 services, home health services and older adult daily living  
11 ~~center~~ services provided during the period of deemed <--  
12 eligibility.

13 (3) Once the department makes a final determination of  
14 eligibility, the department shall authorize medical assistance  
15 payments for the first sixty days of home care services, home  
16 health services and older adult daily living ~~center~~ services <--  
17 provided during the period of deemed eligibility following the  
18 date that the qualified entity established the preliminary  
19 service plan.

20 (4) The department shall verify the information on the  
21 application and make a final determination of medical assistance  
22 eligibility. The department may request additional information  
23 from an applicant for the purpose of completing the verification  
24 process under this clause.

25 (d) Upon request, the department shall provide information  
26 to a qualified entity about Commonwealth policies and procedures  
27 on how to determine whether an individual may be deemed eligible  
28 for medical assistance under subsection (b) (4).

29 (e) The department shall issue a medical assistance bulletin  
30 which contains the Commonwealth policies and procedures

1 necessary to implement this section. The publication of the  
2 medical assistance bulletin under this subsection shall not  
3 delay the implementation of this section.

4 (f) Within seventy-five days of the effective date of this  
5 subsection, the department shall apply for any necessary Federal  
6 waiver or State plan amendment. Fifteen days prior to applying  
7 for any necessary Federal waiver or State plan amendment, the  
8 department shall submit the proposed application to the Health  
9 and Human Services Committee of the Senate, the Health Committee  
10 of the House of Representatives and the Human Services Committee  
11 of the House of Representatives. The department shall maximize  
12 the use of Federal money for the program.

13 (g) Within seventy-five days of the effective date of this  
14 subsection, the department shall issue any revisions to the  
15 State medical assistance plan as required under Title XIX of the  
16 Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.).  
17 Fifteen days prior to issuing any revisions, the department  
18 shall submit the proposed revisions to the Health and Human  
19 Services Committee of the Senate, the Health Committee of the  
20 House of Representatives and the Human Services Committee of the  
21 House of Representatives.

22 (h) On or before January 1 of each year, the department  
23 shall issue a report to the General Assembly with the following  
24 information about the program:

25 (1) The number of individuals who participated in the  
26 program.

27 (2) The average cost for each individual in the program.

28 (3) The number of qualified entities in the program.

29 (4) The administrative costs.

30 (5) The estimated savings.

1 (i) The Legislative Budget and Finance Committee shall  
2 conduct a study of the fiscal impact and effectiveness of the  
3 deemed eligibility program. The committee shall submit a final  
4 report with its findings and recommendations to the Secretary of  
5 the Senate and the Chief Clerk of the House of Representatives  
6 by October 31, 2024.

7 (j) This section shall expire October 31, 2025.

8 (k) As used in this section, the following words and phrases  
9 shall have the following meanings:

10 "Home care services." As defined in 28 Pa. Code § 611.5  
11 (relating to definitions).

12 "Home health services." Part-time, intermittent skilled  
13 nursing services and therapy services provided under 28 Pa. Code  
14 Ch. 601 (relating to home health care agencies) at an  
15 individual's place of residence.

16 "Nursing facility clinically eligible." An individual who:

17 (1) is certified by a physician to be nursing facility  
18 clinically eligible;

19 (2) has been diagnosed with an illness, injury, disability  
20 or medical condition by a physician which requires the  
21 individual to receive health services in accordance with the  
22 following:

23 (i) Skilled nursing and skilled rehabilitation services as  
24 defined in 42 CFR 409.31 (relating to level of care  
25 requirement).

26 (ii) 42 CFR 409.32 (relating to criteria for skilled  
27 services and the need for skilled services).

28 (iii) 42 CFR 409.33 (relating to examples of skilled nursing  
29 and rehabilitation services).

30 (iv) 42 CFR 409.34 (relating to criteria for "daily basis").

1 (v) 42 CFR 409.35 (relating to criteria for "practical  
2 matter").

3 (3) needs health services on a regular basis in the context  
4 of a planned program of health care and management which was  
5 only previously available through an institutional facility.

6 "Nursing facility services." As defined in 42 CFR 440.40  
7 (relating to nursing facility services for individuals age 21 or  
8 older (other than services in an institution for mental  
9 disease), EPSDT, and family planning services and supplies) or  
10 42 CFR 440.155 (relating to nursing facility services, other  
11 than in institutions for mental diseases).

12 "Older adult daily living center services." Services <--  
13 provided to assist an individual with activities of daily living  
14 and essential activities of daily living at an older adult daily  
15 living center as defined under 6 Pa. Code § 11.3 (relating to  
16 definitions). SERVICES PROVIDED OR ARRANGED TO ASSIST IN MEETING <--  
17 THE NEEDS, INCLUDING PERSONAL CARE, SOCIAL, NUTRITIONAL, HEALTH  
18 AND EDUCATIONAL NEEDS, OF CLIENTS THROUGH A PROGRAM OF SOCIAL,  
19 EDUCATIONAL, THERAPEUTIC, REHABILITATIVE, HABILITATIVE AND  
20 DEVELOPMENTAL ACTIVITIES. THE TERM DOES NOT INCLUDE SERVICES  
21 PROVIDED FOR PERSONS WHOSE NEEDS CAN ONLY BE MET IN A LONG-TERM  
22 CARE FACILITY ON AN INPATIENT BASIS RECEIVING PROFESSIONALLY  
23 SUPERVISED NURSING CARE AND RELATED MEDICAL CARE AND OTHER  
24 HEALTH SERVICES.

25 "Program." The deemed eligibility program established by the  
26 department under subsection (a).

27 "Qualified entity." A home care agency, home health agency,  
28 older adult daily living center or an organization authorized by  
29 the department which elects to determine the deemed eligibility  
30 of individuals to receive medical assistance under subsection

1 (b) (4).

2 Section 2. The Secretary of Human Services shall transmit to  
3 the Legislative Reference Bureau, for publication in the  
4 Pennsylvania Bulletin, notice of approval of any necessary  
5 Federal waiver or State plan amendment under section 443.13 of  
6 the act.

7 Section 3. This act shall take effect as follows:

8 (1) Except as set forth in paragraph (2), the addition  
9 of section 443.13 of the act shall take effect 30 days  
10 following publication of the notice under section 2.

11 (2) The addition of section 443.13(f) of the act shall  
12 take effect immediately.

13 (3) The remainder of this act shall take effect  
14 immediately.