

SENATE BILL 218

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By: **Senator Kelley**

Introduced and read first time: February 2, 2015

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Medical Assistance Program – Home– and Community–Based Services Waiver –**
3 **Priority for Services**

4 FOR the purpose of prohibiting the Department of Health and Mental Hygiene from placing
5 certain individuals on a waiting list for certain services or giving priority to certain
6 individuals to receive certain services based on the setting in which the individual is
7 residing at the time of a certain determination; making a certain stylistic change;
8 and generally relating to the Department of Health and Mental Hygiene and the
9 determination of priority to receive home– and community–based waiver services.

10 BY repealing and reenacting, with amendments,
11 Article – Health – General
12 Section 15–132
13 Annotated Code of Maryland
14 (2009 Replacement Volume and 2014 Supplement)

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

17 **Article – Health – General**

18 15–132.

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

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

6 (ii) Medication administration;

7 (iii) Inhalation therapy;

8 (iv) Bladder and catheter management;

9 (v) Assistance with suctioning; or

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

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

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

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

21 (9) “Waiver” means a home- and community-based services waiver under
22 § 1915(c) of the federal Social Security Act, submitted by the Department to the Centers for
23 Medicare and Medicaid Services.

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

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

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

29 (iii) Assure the waiver participant’s health and safety in the
30 community; and

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

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

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

7 (ii) Rehabilitation services; or

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

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

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

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

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

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

22 (1) An initial cap on waiver participation at 7,500 individuals;

23 (2) A limit on annual waiver participation based on State General Fund
24 support as provided in the budget bill;

25 (3) Financial eligibility criteria which include:

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

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

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

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

4 (i) Assisted living services;

5 (ii) Case management services;

6 (iii) Family training;

7 (iv) Dietitian and nutritionist services;

8 (v) Medical day care services; and

9 (vi) Senior center plus services;

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

13 (6) An increase in participant satisfaction;

14 (7) The forestalling of functional decline;

15 (8) A reduction in Medicaid expenditures by reducing utilization of
16 services; and

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

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

22 (e) (1) If [a person] AN INDIVIDUAL determined to be eligible to receive
23 waiver services under this section desires to receive waiver services and an appropriate
24 placement is available, the Department shall authorize the placement.

25 (2) IF THE DEPARTMENT DETERMINES THAT AN APPROPRIATE
26 PLACEMENT IS AVAILABLE UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE
27 DEPARTMENT MAY NOT PLACE THE INDIVIDUAL ON A WAITING LIST OR GIVE
28 PRIORITY TO AN INDIVIDUAL BASED ON THE SETTING IN WHICH THE INDIVIDUAL IS
29 RESIDING AT THE TIME OF THE DETERMINATION.

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

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2015.