

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 912 Session of 2017

INTRODUCED BY BROOKS, STREET, WHITE, BREWSTER, GREENLEAF, MENSCH, COSTA, HAYWOOD, BROWNE, VULAKOVICH, SCHWANK, MARTIN, BAKER, HUGHES, LEACH, VOGEL, TARTAGLIONE, WAGNER, REGAN AND SCAVELLO, OCTOBER 5, 2017

AS AMENDED ON THIRD CONSIDERATION, OCTOBER 2, 2018

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~~ SUBJECT TO FEDERAL APPROVAL, THE <--
15 department shall establish a deemed eligibility program for home
16 care services, home health services and older adult daily living
17 center services to prevent the unnecessary and costly
18 institutionalization of individuals who are eligible for medical
19 assistance nursing facility services and want to receive home

1 care and assistance with daily living in a less restrictive
2 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 THE <--

22 INDIVIDUAL SIGNS a preliminary service plan is developed FOR <--

23 THOSE SERVICES. As authorized under Federal law, the department
24 shall apply a final determination of medical assistance

25 eligibility beginning on the date that a qualified entity

26 determines that an individual is deemed eligible for medical
27 assistance under subsection (b)(4).

28 (2) If a qualified entity determines that an individual is
29 deemed eligible under subsection (b)(4), and the individual is
30 subsequently determined to be ineligible for home care services,

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

14 (3) Once the department makes a final determination of
15 eligibility, the department shall authorize medical assistance
16 payments FOR THE INDIVIDUAL for the first sixty days of AFTER <--
17 THE DATE THE INDIVIDUAL SIGNS A PRELIMINARY SERVICE PLAN LIMITED
18 TO THE home care services, home health services and older adult
19 daily living center services provided during the period of <--
20 deemed eligibility following the date that the qualified entity
21 established the preliminary service plan.

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

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

1 (e) The department shall issue a medical assistance bulletin
2 which contains the Commonwealth policies and procedures
3 necessary to implement this section. POLICIES AND PROCEDURES <--
4 UNDER THIS SUBSECTION ARE NOT SUBJECT TO THE ACT OF JULY 31,
5 1968 (P.L.769, NO.240), REFERRED TO AS THE COMMONWEALTH
6 DOCUMENTS LAW; THE ACT OF OCTOBER 15, 1980 (P.L.950, NO.164),
7 KNOWN AS THE COMMONWEALTH ATTORNEYS ACT; OR THE ACT OF JUNE 25,
8 1982 (P.L.633, NO.181), KNOWN AS THE REGULATORY REVIEW ACT. The
9 publication of the medical assistance bulletin under this
10 subsection shall not delay the implementation of this section.

11 (f) Within ~~seventy five~~ ONE HUNDRED EIGHTY days of the <--
12 effective date of this subsection, the department shall apply
13 for any necessary Federal waiver or State plan amendment
14 REQUIRED UNDER TITLE XIX OF THE SOCIAL SECURITY ACT (49 STAT. <--
15 620, 42 U.S.C. 1396 ET SEQ.). Fifteen days prior to applying for
16 any necessary Federal waiver or State plan amendment, the
17 department shall submit the proposed application to the Health
18 and Human Services Committee of the Senate, the Health Committee
19 of the House of Representatives and the Human Services Committee
20 of the House of Representatives. The department shall maximize
21 the use of Federal money for the program.

22 (g) ~~Within seventy five days of the effective date of this~~ <--
23 ~~subsection, the department shall issue any revisions to the~~
24 ~~State medical assistance plan as required under Title XIX of the~~
25 ~~Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.).~~
26 ~~Fifteen days prior to issuing any revisions, the department~~
27 ~~shall submit the proposed revisions to the Health and Human~~
28 ~~Services Committee of the Senate, the Health Committee of the~~
29 ~~House of Representatives and the Human Services Committee of the~~
30 ~~House of Representatives.~~

1 ~~(h)~~ (G) On or before January 1 of each year, the department <--
2 shall issue a report to the General Assembly with the following
3 information about the program:

4 (1) The number of individuals who participated in the
5 program.

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

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

8 (4) The administration costs.

9 (5) The estimated savings.

10 ~~(i)~~ (H) The Legislative Budget and Finance Committee shall <--
11 conduct a study of the fiscal impact and effectiveness of the
12 deemed eligibility program. The committee shall submit a final
13 report with its findings and recommendations to the Secretary of
14 the Senate and the Chief Clerk of the House of Representatives
15 by October 31, 2023.

16 ~~(j)~~ (I) This section shall expire October 31, 2024. <--

17 ~~(k)~~ (J) As used in this section, the following words and <--
18 phrases shall have the following meanings:

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

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

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

26 (1) is certified by a physician to be nursing facility
27 clinically eligible; <--

28 ~~(2) has been diagnosed with an illness, injury, disability~~

29 CLINICALLY ELIGIBLE AFTER THE INDIVIDUAL HAS BEEN DIAGNOSED WITH <--
30 AN ILLNESS, INJURY, DISABILITY or medical condition by a

1 physician which requires the individual to receive health
2 services in accordance with the following: <--
3 (i) Skilled THE DEFINITION OF SKILLED nursing and skilled <--
4 rehabilitation services as defined in 42 CFR 409.31 (relating to <--
5 level of care requirement)-; <--
6 (ii) 42 CFR 409.32 (relating to criteria for skilled
7 services and the need for skilled services)-; <--
8 (iii) 42 CFR 409.33 (relating to examples of skilled nursing
9 and rehabilitation services)-; <--
10 (iv) 42 CFR 409.34 (relating to criteria for "daily
11 basis")-; AND <--
12 (v) 42 CFR 409.35 (relating to criteria for "practical
13 matter")-; OR <--
14 (3) (2) needs health services on a regular basis in the <--
15 context of a planned program of health care and management which
16 was only previously available through an institutional facility.
17 "Nursing facility services." As defined in 42 CFR 440.40
18 (relating to nursing facility services for individuals age 21 or
19 older (other than services in an institution for mental
20 disease), EPSDT, and family planning services and supplies) or
21 42 CFR 440.155 (relating to nursing facility services, other
22 than in institutions for mental diseases).
23 "Older adult daily living center services." Services
24 provided to assist an individual with activities of daily living
25 and essential activities of daily living at an older adult daily
26 living center as defined under 6 Pa. Code § 11.3 (relating to
27 definitions).
28 "Program." The deemed eligibility program established by the
29 department under subsection (a).
30 "Qualified entity." A home care agency, home health agency,

1 older adult daily living center or an organization authorized by
2 the department which elects to determine the deemed eligibility
3 of individuals to receive medical assistance under subsection
4 (b) (4).

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

10 SECTION 2. IF A NECESSARY FEDERAL WAIVER OR STATE PLAN <--
11 AMENDMENT UNDER SECTION 443.13 OF THE ACT IS APPROVED BY THE
12 CENTERS FOR MEDICARE AND MEDICAID SERVICES FOR FEDERAL
13 REIMBURSEMENT FOR SERVICES PROVIDED TO AN INDIVIDUAL DEEMED
14 ELIGIBLE FOR HOME CARE SERVICES, HOME HEALTH SERVICES OR OLDER
15 ADULT DAILY LIVING SERVICES, THE SECRETARY OF HUMAN SERVICES
16 SHALL TRANSMIT NOTICE OF THE APPROVAL TO THE LEGISLATIVE
17 REFERENCE BUREAU FOR PUBLICATION IN THE PENNSYLVANIA BULLETIN.

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

19 (1) Except as set forth in paragraph (2), the addition
20 of section 443.13 of the act shall take effect 30 days
21 following publication of the notice ~~in which the Centers for <--~~
22 ~~Medicare and Medicaid Services approve Federal reimbursement~~
23 ~~for services provided to an individual deemed eligible for~~
24 ~~home care services, home health services and older adult~~
25 ~~daily living center services~~ under section 2.

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

28 (3) The remainder of this act shall take effect
29 immediately.