

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1829 Session of
2017

INTRODUCED BY BERNSTINE, KAUFER, BAKER, DRISCOLL, LONGIETTI,
WARD, DAVIS, CHARLTON, ROTHMAN, MILLARD, SCHWEYER, COX,
WHEELAND, ZIMMERMAN, PHILLIPS-HILL, CORBIN, SCHLOSSBERG,
DeLUCA, HENNESSEY, COOK, KEEFER, RADER, CONKLIN, DEAN AND
SAYLOR, SEPTEMBER 27, 2017

SENATOR BAKER, HEALTH AND HUMAN SERVICES, IN SENATE, AS AMENDED,
SEPTEMBER 26, 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 ~~443.12~~ 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

1 are eligible for medical assistance nursing facility services
2 and want to receive home care and assistance with daily living
3 in a less restrictive setting.

4 (b) The program shall:

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

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

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

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

17 (c) The following apply:

18 (1) If a qualified entity determines that an individual is
19 deemed eligible to receive medical assistance under subsection
20 (b)(4), the individual may begin receiving home care services,
21 home health services and older adult daily living center

22 services from a medical assistance provider ~~immediately~~ AS SOON <--
23 AS A PRELIMINARY SERVICE PLAN IS DEVELOPED. As authorized under
24 Federal law, the department shall apply a final determination of
25 medical assistance eligibility beginning on the date that a
26 qualified entity determines that an individual is deemed
27 eligible for medical 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 ~~paragraph~~ CLAUSE <--
5 (1) shall not be reimbursed by the Commonwealth for the cost of
6 the home care services, home health services and older adult
7 daily living center services provided during the period of
8 deemed eligibility. If the individual provided fraudulent
9 information under this section, the medical assistance provider
10 may seek reimbursement from the individual for the cost of home
11 care services, home health services and older adult daily living
12 center services provided during the period of deemed
13 eligibility.

14 (3) Once the department makes a final determination of
15 eligibility, the department shall authorize medical assistance
16 payments for THE FIRST SIXTY DAYS OF home care services, home <--
17 health services and older adult daily living center services
18 provided during the period of ~~presumed eligibility and as of the~~ <--
19 ~~date that the qualified entity established deemed eligibility~~
20 ~~under subsection (b) (4).~~ DEEMED ELIGIBILITY FOLLOWING THE DATE <--
21 THAT THE QUALIFIED ENTITY ESTABLISHED THE PRELIMINARY SERVICE
22 PLAN.

23 (4) ~~Within sixty days of the submission of an application~~ <--
24 ~~under this section, the~~ THE department shall verify the <--
25 information on the application and make a final determination of
26 medical assistance eligibility. The department may request
27 additional information from an applicant for the purpose of
28 completing the verification process under this ~~paragraph~~ CLAUSE. <--

29 (d) Upon request, the department shall provide information
30 to a qualified entity about Commonwealth policies and procedures

on how to determine whether an individual may be deemed eligible
for medical assistance under subsection (b)(4).

(e) The department shall issue a medical assistance bulletin
which contains the Commonwealth policies and procedures
necessary to implement this section. The publication of the
medical assistance bulletin under this subsection shall not
delay the implementation of this section.

~~(f) The department shall apply for any necessary Federal
waivers and maximize the use of Federal money for the program.~~ <--

~~(g) The department shall issue any revisions to the State
medical assistance plan as required under Title XIX of the
Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.)
before implementing the program.~~

(F) WITHIN SEVENTY-FIVE DAYS OF THE EFFECTIVE DATE OF THIS
SUBSECTION, THE DEPARTMENT SHALL APPLY FOR ANY NECESSARY FEDERAL
WAIVER OR STATE PLAN AMENDMENT. FIFTEEN DAYS PRIOR TO APPLYING
FOR ANY NECESSARY FEDERAL WAIVER OR STATE PLAN AMENDMENT, THE
DEPARTMENT SHALL SUBMIT THE PROPOSED APPLICATION TO THE HEALTH
AND HUMAN SERVICES COMMITTEE OF THE SENATE, THE HEALTH COMMITTEE
OF THE HOUSE OF REPRESENTATIVES AND THE HUMAN SERVICES COMMITTEE
OF THE HOUSE OF REPRESENTATIVES. THE DEPARTMENT SHALL MAXIMIZE
THE USE OF FEDERAL MONEY FOR THE PROGRAM. <--

(G) WITHIN SEVENTY-FIVE DAYS OF THE EFFECTIVE DATE OF THIS
SUBSECTION, THE DEPARTMENT SHALL ISSUE ANY REVISIONS TO THE
STATE MEDICAL ASSISTANCE PLAN AS REQUIRED UNDER TITLE XIX OF THE
SOCIAL SECURITY ACT (49 STAT. 620, 42 U.S.C. § 1396 ET SEQ.).
FIFTEEN DAYS PRIOR TO ISSUING ANY REVISIONS, THE DEPARTMENT
SHALL SUBMIT THE PROPOSED REVISIONS TO THE HEALTH AND HUMAN
SERVICES COMMITTEE OF THE SENATE, THE HEALTH COMMITTEE OF THE
HOUSE OF REPRESENTATIVES AND THE HUMAN SERVICES COMMITTEE OF THE

1 HOUSE OF REPRESENTATIVES.

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

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

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

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

9 (4) The administration costs.

10 (5) The estimated savings.

11 (I) THE LEGISLATIVE BUDGET AND FINANCE COMMITTEE SHALL <--
12 CONDUCT A STUDY OF THE FISCAL IMPACT AND EFFECTIVENESS OF THE
13 DEEMED ELIGIBILITY PROGRAM. THE COMMITTEE SHALL SUBMIT A FINAL
14 REPORT WITH ITS FINDINGS AND RECOMMENDATIONS TO THE SECRETARY OF
15 THE SENATE AND THE CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES
16 BY OCTOBER 31, 2023.

17 (J) THIS SECTION SHALL EXPIRE OCTOBER 31, 2024.

18 ~~(i)~~ (K) As used in this section, the following words and <--
19 phrases shall have the following meanings:

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

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

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

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

29 (2) has been diagnosed with an illness, injury, disability
30 or medical condition by a physician which requires the

individual to receive health services in accordance with the following:

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

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

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

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

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

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

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

"Older adult daily living center services." Services provided to assist an individual with activities of daily living and essential activities of daily living at an older adult daily living center as defined under 6 Pa. Code § 11.3 (relating to definitions).

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

"Qualified entity." A home care agency, home health agency, older adult daily living center or an organization authorized by

1 the department which elects to determine the deemed eligibility
2 of individuals to receive medical assistance under subsection
3 (b) (4).

4 ~~Section 2. This act shall take effect in 60 days.~~ <--

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 3. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

11 (1) EXCEPT AS SET FORTH IN PARAGRAPH (2), THE ADDITION
12 OF SECTION 443.13 OF THE ACT SHALL TAKE EFFECT 30 DAYS
13 FOLLOWING PUBLICATION OF THE NOTICE UNDER SECTION 2.

14 (2) THE ADDITION OF SECTION 443.13(F) OF THE ACT SHALL
15 TAKE EFFECT IMMEDIATELY.

16 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT
17 IMMEDIATELY.