

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

SENATOR BAKER, HEALTH AND HUMAN SERVICES, 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 a medical assistance presumptive eligibility <--
5 program for home care and home health services. PROVIDING FOR <--
6 MEDICAL ASSISTANCE DEEMED ELIGIBILITY PROGRAM FOR HOME CARE,
7 HOME HEALTH AND OLDER ADULT DAILY LIVING CENTER SERVICES.

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

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

13 ~~Section 443.12. Medical Assistance Presumptive Eligibility <--~~
14 ~~Program for Home Care and Home Health Services. (a) The~~
15 ~~department shall establish a presumptive eligibility program for~~
16 ~~home care services and home health services to prevent the~~
17 ~~unnecessary and costly institutionalization of individuals who~~
18 ~~are eligible for medical assistance nursing facility services~~
19 ~~and wish to receive care in a less restrictive setting.~~

1 ~~(b) The program shall:~~

2 ~~(1) Be designed to provide home care services and home~~  
3 ~~health services only for individuals who are sixty years of age~~  
4 ~~or older and are nursing facility clinically eligible. An~~  
5 ~~individual is considered nursing facility clinically eligible if~~  
6 ~~all of the following criteria are met:~~

7 ~~(i) The individual has an illness, injury, disability or~~  
8 ~~medical condition diagnosed by a physician.~~

9 ~~(ii) As a result of that diagnosed illness, injury,~~  
10 ~~disability or medical condition the individual requires care and~~  
11 ~~services above the level of room and board.~~

12 ~~(iii) A physician certifies that the individual is nursing~~  
13 ~~facility clinically eligible.~~

14 ~~(iv) The care and services are either skilled nursing or~~  
15 ~~rehabilitation services as specified by the Medicare program~~  
16 ~~under 42 CFR §§ 409.31(a) and (b) (1) and (3) (relating to level~~  
17 ~~or care requirement), 409.32 (relating to criteria for skilled~~  
18 ~~services and the need for skilled services), 409.33 (relating to~~  
19 ~~examples of skilled nursing and rehabilitation services), 409.34~~  
20 ~~(relating to criteria for "daily basis") and 409.35 (relating to~~  
21 ~~criteria for "practical matter"), or health related care and~~  
22 ~~services that may not be as inherently complex as skilled~~  
23 ~~nursing or rehabilitation services but which are needed and~~  
24 ~~provided on a regular basis in the context of a planned program~~  
25 ~~of health care and management and were previously available only~~  
26 ~~through institutional facilities.~~

27 ~~(2) Permit a qualified entity to submit an application for~~  
28 ~~medical assistance on behalf of individuals.~~

29 ~~(3) Permit an individual who is applying for medical~~  
30 ~~assistance to declare income and assets on an application form~~

1 ~~and attest to the accuracy of the income and assets provided on~~  
2 ~~the application form.~~

3 ~~(4) Permit a qualified entity to determine the presumptive~~  
4 ~~eligibility of an individual to receive medical assistance and~~  
5 ~~submit an application to receive medical assistance on behalf of~~  
6 ~~the individual to the department.~~

7 ~~(c) The following shall apply:~~

8 ~~(1) If a qualified entity determines that an individual is~~  
9 ~~presumptively eligible to receive medical assistance under~~  
10 ~~subsection (b) (4), the individual may begin receiving home care~~  
11 ~~services and home health services from a medical assistance~~  
12 ~~provider immediately. As authorized under Federal law, the~~  
13 ~~department shall apply a final determination of medical~~  
14 ~~assistance eligibility for an individual presumed eligible as of~~  
15 ~~the date that presumptive eligibility is established by the~~  
16 ~~qualified entity.~~

17 ~~(2) If an individual determined to be presumptively eligible~~  
18 ~~under subsection (b) (4) is subsequently determined to be~~  
19 ~~ineligible for home care services or home health services by the~~  
20 ~~department, the qualified entity which made the determination~~  
21 ~~under subsection (b) (4) shall not be reimbursed by the~~  
22 ~~Commonwealth for the cost of home care services or home health~~  
23 ~~services provided during the period of presumed eligibility. If~~  
24 ~~the individual provided fraudulent information under this~~  
25 ~~section, the qualified entity may seek reimbursement from the~~  
26 ~~individual for the cost of home care services and home health~~  
27 ~~services provided during the period of presumed eligibility.~~

28 ~~(3) Once the department makes a final determination of~~  
29 ~~eligibility, it shall authorize medical assistance payment for~~  
30 ~~home care services and home health services provided during the~~

1 ~~period of presumed eligibility as of the date that the qualified~~  
2 ~~entity established presumed eligibility under subsection (b) (4).~~

3 ~~(4) Within sixty days of the submission of an application~~  
4 ~~under this section, the department shall verify the information~~  
5 ~~on the application and make a final determination of medical~~  
6 ~~assistance eligibility. The department may request additional~~  
7 ~~information from an applicant for the purpose of completing the~~  
8 ~~verification process under this clause.~~

9 ~~(d) The department shall provide to an organization upon~~  
10 ~~request relevant State policies, procedures and information on~~  
11 ~~how to fulfill responsibilities in determining an individual~~  
12 ~~presumptively eligible for home care services or home health~~  
13 ~~services.~~

14 ~~(e) The department shall issue a medical assistance bulletin~~  
15 ~~with State policies and procedures to implement this section,~~  
16 ~~the publication of which shall not delay the implementation of~~  
17 ~~this section.~~

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

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

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

27 ~~(1) The number of individuals who participated in the~~  
28 ~~program.~~

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

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

1 ~~(4) The administrative costs of the program.~~

2 ~~(5) The estimated savings achieved through the program.~~

3 ~~(i) As used in this section, the following words and phrases~~  
4 ~~shall have the meanings given to them in this subsection:~~

5 ~~"Home care services" means the term as defined under 28 Pa.~~  
6 ~~Code § 611.5 (relating to definitions).~~

7 ~~"Home health services" means part time, intermittent skilled~~  
8 ~~nursing and therapy services provided in an individual's place~~  
9 ~~of residence by a home health care agency as defined under 28~~  
10 ~~Pa. Code § 601.6 (relating to definitions).~~

11 ~~"Nursing facility services" means nursing facility services~~  
12 ~~under 42 CFR 440.40 (relating to nursing facility services for~~  
13 ~~individuals age 21 or older (other than services in an~~  
14 ~~institution for mental disease), EPSDT, and family planning~~  
15 ~~services and supplies) or 42 CFR 440.155 (relating to nursing~~  
16 ~~facility services, other than in institutions for mental~~  
17 ~~diseases).~~

18 ~~"Program" means the presumptive eligibility program for home~~  
19 ~~care services and home health services established under~~  
20 ~~subsection (a).~~

21 ~~"Qualified entity" means a home care agency as defined under~~  
22 ~~28 Pa. Code § 611.5 or a home health care agency as defined~~  
23 ~~under 28 Pa. Code § 601.6.~~

24 Section 2. This act shall take effect in 60 days.

25 SECTION 443.13. MEDICAL ASSISTANCE DEEMED ELIGIBILITY

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26 PROGRAM FOR HOME CARE, HOME HEALTH AND OLDER ADULT DAILY LIVING  
27 CENTER SERVICES.--(A) THE DEPARTMENT SHALL ESTABLISH A DEEMED  
28 ELIGIBILITY PROGRAM FOR HOME CARE SERVICES, HOME HEALTH SERVICES  
29 AND OLDER ADULT DAILY LIVING CENTER SERVICES TO PREVENT THE  
30 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-FIVE YEARS OF AGE OR OLDER AND NURSING  
8 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 AS SOON AS A  
23 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 CLAUSE (1) SHALL  
5 NOT BE REIMBURSED BY THE COMMONWEALTH FOR THE COST OF THE HOME  
6 CARE SERVICES, HOME HEALTH SERVICES AND OLDER ADULT DAILY LIVING  
7 CENTER SERVICES PROVIDED DURING THE PERIOD OF DEEMED  
8 ELIGIBILITY. IF THE INDIVIDUAL PROVIDED FRAUDULENT INFORMATION  
9 UNDER THIS SECTION, THE MEDICAL ASSISTANCE PROVIDER MAY SEEK  
10 REIMBURSEMENT FROM THE INDIVIDUAL FOR THE COST OF HOME CARE  
11 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 DEEMED ELIGIBILITY FOLLOWING THE  
19 DATE THAT THE QUALIFIED ENTITY ESTABLISHED THE PRELIMINARY  
20 SERVICE PLAN.

21 (4) THE DEPARTMENT SHALL VERIFY THE INFORMATION ON THE  
22 APPLICATION AND MAKE A FINAL DETERMINATION OF MEDICAL ASSISTANCE  
23 ELIGIBILITY. THE DEPARTMENT MAY REQUEST ADDITIONAL INFORMATION  
24 FROM AN APPLICANT FOR THE PURPOSE OF COMPLETING THE VERIFICATION  
25 PROCESS UNDER THIS CLAUSE.

26 (D) UPON REQUEST, THE DEPARTMENT SHALL PROVIDE INFORMATION  
27 TO A QUALIFIED ENTITY ABOUT COMMONWEALTH POLICIES AND PROCEDURES  
28 ON HOW TO DETERMINE WHETHER AN INDIVIDUAL MAY BE DEEMED ELIGIBLE  
29 FOR MEDICAL ASSISTANCE UNDER SUBSECTION (B) (4).

30 (E) THE DEPARTMENT SHALL ISSUE A MEDICAL ASSISTANCE BULLETIN

1 WHICH CONTAINS THE COMMONWEALTH POLICIES AND PROCEDURES  
2 NECESSARY TO IMPLEMENT THIS SECTION. THE PUBLICATION OF THE  
3 MEDICAL ASSISTANCE BULLETIN UNDER THIS SUBSECTION SHALL NOT  
4 DELAY THE IMPLEMENTATION OF THIS SECTION.

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

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

23 (H) ON OR BEFORE JANUARY 1 OF EACH YEAR, THE DEPARTMENT  
24 SHALL ISSUE A REPORT TO THE GENERAL ASSEMBLY WITH THE FOLLOWING  
25 INFORMATION ABOUT THE PROGRAM:

26 (1) THE NUMBER OF INDIVIDUALS WHO PARTICIPATED IN THE  
27 PROGRAM.

28 (2) THE AVERAGE COST FOR EACH INDIVIDUAL IN THE PROGRAM.

29 (3) THE NUMBER OF QUALIFIED ENTITIES IN THE PROGRAM.

30 (4) THE ADMINISTRATION COSTS.

1       (5) THE ESTIMATED SAVINGS.

2       (I) THE LEGISLATIVE BUDGET AND FINANCE COMMITTEE SHALL  
3 CONDUCT A STUDY OF THE FISCAL IMPACT AND EFFECTIVENESS OF THE  
4 DEEMED ELIGIBILITY PROGRAM. THE COMMITTEE SHALL SUBMIT A FINAL  
5 REPORT WITH ITS FINDINGS AND RECOMMENDATIONS TO THE SECRETARY OF  
6 THE SENATE AND THE CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES  
7 BY OCTOBER 31, 2023.

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

9       (K) AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES  
10 SHALL HAVE THE FOLLOWING MEANINGS:

11       "HOME CARE SERVICES." AS DEFINED IN 28 PA. CODE § 611.5  
12 (RELATING TO DEFINITIONS).

13       "HOME HEALTH SERVICES." PART-TIME, INTERMITTENT SKILLED  
14 NURSING SERVICES AND THERAPY SERVICES PROVIDED UNDER 28 PA. CODE  
15 CH. 601 (RELATING TO HOME HEALTH CARE AGENCIES) AT AN  
16 INDIVIDUAL'S PLACE OF RESIDENCE.

17       "NURSING FACILITY CLINICALLY ELIGIBLE." AN INDIVIDUAL WHO:

18       (1) IS CERTIFIED BY A PHYSICIAN TO BE NURSING FACILITY  
19 CLINICALLY ELIGIBLE;

20       (2) HAS BEEN DIAGNOSED WITH AN ILLNESS, INJURY, DISABILITY  
21 OR MEDICAL CONDITION BY A PHYSICIAN WHICH REQUIRES THE  
22 INDIVIDUAL TO RECEIVE HEALTH SERVICES IN ACCORDANCE WITH THE  
23 FOLLOWING:

24       (I) SKILLED NURSING AND SKILLED REHABILITATION SERVICES AS  
25 DEFINED IN 42 CFR 409.31 (RELATING TO LEVEL OF CARE  
26 REQUIREMENT).

27       (II) 42 CFR 409.32 (RELATING TO CRITERIA FOR SKILLED  
28 SERVICES AND THE NEED FOR SKILLED SERVICES).

29       (III) 42 CFR 409.33 (RELATING TO EXAMPLES OF SKILLED NURSING  
30 AND REHABILITATION SERVICES).

1 (IV) 42 CFR 409.34 (RELATING TO CRITERIA FOR "DAILY BASIS").

2 (V) 42 CFR 409.35 (RELATING TO CRITERIA FOR "PRACTICAL  
3 MATTER").

4 (3) NEEDS HEALTH SERVICES ON A REGULAR BASIS IN THE CONTEXT  
5 OF A PLANNED PROGRAM OF HEALTH CARE AND MANAGEMENT WHICH WAS  
6 ONLY PREVIOUSLY AVAILABLE THROUGH AN INSTITUTIONAL FACILITY.

7 "NURSING FACILITY SERVICES." AS DEFINED IN 42 CFR 440.40  
8 (RELATING TO NURSING FACILITY SERVICES FOR INDIVIDUALS AGE 21 OR  
9 OLDER (OTHER THAN SERVICES IN AN INSTITUTION FOR MENTAL  
10 DISEASE), EPSDT, AND FAMILY PLANNING SERVICES AND SUPPLIES) OR  
11 42 CFR 440.155 (RELATING TO NURSING FACILITY SERVICES, OTHER  
12 THAN IN INSTITUTIONS FOR MENTAL DISEASES).

13 "OLDER ADULT DAILY LIVING CENTER SERVICES." SERVICES  
14 PROVIDED TO ASSIST AN INDIVIDUAL WITH ACTIVITIES OF DAILY LIVING  
15 AND ESSENTIAL ACTIVITIES OF DAILY LIVING AT AN OLDER ADULT DAILY  
16 LIVING CENTER AS DEFINED UNDER 6 PA. CODE § 11.3 (RELATING TO  
17 DEFINITIONS).

18 "PROGRAM." THE DEEMED ELIGIBILITY PROGRAM ESTABLISHED BY THE  
19 DEPARTMENT UNDER SUBSECTION (A).

20 "QUALIFIED ENTITY." A HOME CARE AGENCY, HOME HEALTH AGENCY,  
21 OLDER ADULT DAILY LIVING CENTER OR AN ORGANIZATION AUTHORIZED BY  
22 THE DEPARTMENT WHICH ELECTS TO DETERMINE THE DEEMED ELIGIBILITY  
23 OF INDIVIDUALS TO RECEIVE MEDICAL ASSISTANCE UNDER SUBSECTION  
24 (B) (4).

25 SECTION 2. THE SECRETARY OF HUMAN SERVICES SHALL TRANSMIT TO  
26 THE LEGISLATIVE REFERENCE BUREAU, FOR PUBLICATION IN THE  
27 PENNSYLVANIA BULLETIN, NOTICE OF APPROVAL OF ANY NECESSARY  
28 FEDERAL WAIVER OR STATE PLAN AMENDMENT UNDER SECTION 443.13 OF  
29 THE ACT.

30 SECTION 3. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

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

4           (2) THE ADDITION OF SECTION 443.13(F) OF THE ACT SHALL  
5 TAKE EFFECT IMMEDIATELY.

6           (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT  
7 IMMEDIATELY.