

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 277 Session of 2019

INTRODUCED BY BROOKS, STREET, BREWSTER, PHILLIPS-HILL,
 HUTCHINSON, MENSCH, GORDNER, BAKER, SCHWANK, MUTH, COLLETT,
 VOGEL, HAYWOOD AND BROWNE, FEBRUARY 7, 2019

REFERRED TO HEALTH AND HUMAN SERVICES, FEBRUARY 7, 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) 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 for those services.
23 As authorized under Federal law, the department shall apply a
24 final determination of medical assistance eligibility beginning
25 on the date that a qualified entity determines that an
26 individual is deemed eligible for medical assistance under
27 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 receive payment from the Commonwealth for the home care
6 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 payment from the individual for the home care services, home
11 health services and older adult daily living center services
12 provided during the period of deemed eligibility.

13 (3) Once the department makes a final determination of
14 eligibility, the department shall authorize medical assistance
15 payments for the individual for the first sixty days after the
16 date the individual signs a preliminary service plan limited to
17 the home care services, home health services and older adult
18 daily living center services provided during that period.

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

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

28 (e) The department shall issue a medical assistance bulletin
29 which contains the Commonwealth policies and procedures
30 necessary to implement this section. The publication of the

1 medical assistance bulletin under this subsection shall not
2 delay the implementation of this section. Policies and
3 procedures under this subsection are not subject to:

4 (1) Section 205 of the act of July 31, 1968 (P.L.769,
5 No.240), referred to as the Commonwealth Documents Law.

6 (2) Section 204(b) of the act of October 15, 1980 (P.L.950,
7 No.164), known as the "Commonwealth Attorneys Act".

8 (3) the act of June 25, 1982 (P.L.633, No.181), known as the
9 "Regulatory Review Act."

10 (f) Within one hundred eighty days of the effective date of
11 this subsection, the department shall apply for any necessary
12 Federal waiver or State plan amendment required under Title XIX
13 of the Social Security Act (49 Stat. 620, 42 U.S.C. 1396 et
14 seq.). Fifteen days prior to applying for any necessary Federal
15 waiver or State plan amendment, the department shall submit the
16 proposed application to the Health and Human Services Committee
17 of the Senate, the Health Committee of the House of
18 Representatives and the Human Services Committee of the House of
19 Representatives. The department shall maximize the use of
20 Federal money for the program.

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

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

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

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

28 (4) The administration costs.

29 (5) The estimated savings.

30 (h) The Legislative Budget and Finance Committee shall

1 conduct a study of the fiscal impact and effectiveness of the
2 deemed eligibility program. The committee shall submit a final
3 report with its findings and recommendations to the Secretary of
4 the Senate and the Chief Clerk of the House of Representatives
5 by October 31, 2023.

6 (i) This section shall expire October 31, 2024.

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

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

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

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

16 (1) is certified by a physician to be nursing facility
17 clinically eligible after the individual has been diagnosed
18 with an illness, injury, disability or medical condition by a
19 physician which requires the individual to receive health
20 services in accordance with:

21 (i) the definition of skilled nursing and skilled
22 rehabilitation services in 42 CFR 409.31 (relating to level of
23 care requirement);

24 (ii) 42 CFR 409.32 (relating to criteria for skilled
25 services and the need for skilled services);

26 (iii) 42 CFR 409.33 (relating to examples of skilled nursing
27 and rehabilitation services);

28 (iv) 42 CFR 409.34 (relating to criteria for "daily basis");
29 and

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

1 matter"); or

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

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

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

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

18 "Qualified entity." A home care agency, home health agency,
19 older adult daily living center or an organization authorized by
20 the department which elects to determine the deemed eligibility
21 of individuals to receive medical assistance under subsection
22 (b) (4).

23 Section 2. If a necessary Federal waiver or State plan
24 amendment under section 443.13 of the act is approved by the
25 Centers for Medicare and Medicaid Services for Federal
26 reimbursement for services provided to an individual deemed
27 eligible for home care services, home health services or older
28 adult daily living services, the Secretary of Human Services
29 shall transmit notice of the approval to the Legislative
30 Reference Bureau for publication in the Pennsylvania Bulletin.

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

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

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

7 (3) The remainder of this act shall take effect
8 immediately.