

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 51 Session of 2019

INTRODUCED BY BERNSTINE, RYAN, McNEILL, SCHLOSSBERG, LONGIETTI, MENTZER, PICKETT, HILL-EVANS, WARREN, RAPP, MIZGORSKI, DeLISSIO, DeLUCA AND SOLOMON, JANUARY 28, 2019

REFERRED TO COMMITTEE ON HEALTH, JANUARY 28, 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) 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
18 are eligible for medical assistance nursing facility services
19 and want to receive home care and assistance with daily living

1 in a less restrictive setting.

2 (b) The program shall:

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

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

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

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

15 (c) The following apply:

16 (1) If a qualified entity determines that an individual is
17 deemed eligible to receive medical assistance under subsection
18 (b)(4), the individual may begin receiving home care services,
19 home health services and older adult daily living center
20 services from a medical assistance provider as soon as a
21 preliminary service plan is developed. As authorized under
22 Federal law, the department shall apply a final determination of
23 medical assistance eligibility beginning on the date that a
24 qualified entity determines that an individual is deemed
25 eligible for medical assistance under subsection (b)(4).

26 (2) If a qualified entity determines that an individual is
27 deemed eligible under subsection (b)(4), and the individual is
28 subsequently determined to be ineligible for home care services,
29 home health services and older adult daily living center
30 services by the department, the medical assistance provider

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

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

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.

3 (f) Within seventy-five days of the effective date of this
4 subsection, the department shall apply for any necessary Federal
5 waiver or State plan amendment. Fifteen days prior to applying
6 for any necessary Federal waiver or State plan amendment, the
7 department shall submit the proposed application to the Health
8 and Human Services Committee of the Senate, the Health Committee
9 of the House of Representatives and the Human Services Committee
10 of the House of Representatives. The department shall maximize
11 the use of Federal money for the program.

12 (g) Within seventy-five days of the effective date of this
13 subsection, the department shall issue any revisions to the
14 State medical assistance plan as required under Title XIX of the
15 Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.).
16 Fifteen days prior to issuing any revisions, the department
17 shall submit the proposed revisions to the Health and Human
18 Services Committee of the Senate, the Health Committee of the
19 House of Representatives and the Human Services Committee of the
20 House of Representatives.

21 (h) 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 administrative costs.

29 (5) The estimated savings.

30 (i) 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, 2024.

6 (j) This section shall expire October 31, 2025.

7 (k) 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;

18 (2) has been diagnosed with an illness, injury, disability
19 or medical condition by a physician which requires the
20 individual to receive health services in accordance with the
21 following:

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

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

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

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

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

1 matter").

2 (3) 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. The Secretary of Human Services shall transmit to
24 the Legislative Reference Bureau, for publication in the
25 Pennsylvania Bulletin, notice of approval of any necessary
26 Federal waiver or State plan amendment under section 443.13 of
27 the act.

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

29 (1) Except as set forth in paragraph (2), the addition
30 of section 443.13 of the act shall take effect 30 days

1 following publication of the notice under section 2.

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

4 (3) The remainder of this act shall take effect
5 immediately.