

## **CHAPTER 649**

**(House Bill 218)**

AN ACT concerning

### **Department of Health and Mental Hygiene – Living at Home Waiver Program**

FOR the purpose of renaming the Community Attendant Services and Support Program to be the Living at Home Waiver Program; transferring the authority for administering the Program from the Department of Human Resources to the Department of Health and Mental Hygiene; altering the eligibility age for eligible individuals under the Program; repealing a certain reporting requirement; and generally relating to the Living at Home Waiver Program.

BY repealing

Article – Human Services

Section 7–501 through 7–510 and the subtitle “Subtitle 5. Community Attendant Services and Supports Program”

Annotated Code of Maryland

(2007 Volume)

BY adding to

Article – Health – General

Section 15–801 through 15–809 to be under the new subtitle “Subtitle 8. Living at Home Waiver Program”

Annotated Code of Maryland

(2005 Replacement Volume and 2007 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 7–501 through 7–510 and the subtitle “Subtitle 5. Community Attendant Services and Supports Program” of Article – Human Services of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

#### **Article – Health – General**

#### **SUBTITLE 8. LIVING AT HOME WAIVER PROGRAM.**

#### **15–801.**

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

**(B) "AGENCY-PROVIDER MODEL" MEANS A METHOD OF PROVIDING COMMUNITY ATTENDANT SERVICES AND SUPPORTS FOR A CONSUMER BY A PERSONAL ASSISTANT WHO IS:**

- (1) EMPLOYED BY A PROVIDER AGENCY; AND**
- (2) SUPERVISED AND EVALUATED BY THE CONSUMER.**

**(C) "ATTENDANT SERVICES AND SUPPORTS" MEANS ANY OF THE FOLLOWING SERVICES FOR A CONSUMER, WHICH ARE CERTIFIED AS NECESSARY BY A HEALTH CARE PROFESSIONAL:**

- (1) DRESSING;**
- (2) PREPARING FOOD AND ASSISTING WITH EATING;**
- (3) BATHING AND PERSONAL HYGIENE;**
- (4) ASSISTING WITH ROUTINE BODILY FUNCTIONS, INCLUDING BOWEL AND URINARY CARE;**
- (5) MOVING INTO, OUT OF, OR TURNING IN BED;**
- (6) LAUNDERING AND OTHER CLOTHING CARE; AND**
- (7) CLEANING HOUSE AND PERFORMING OTHER SERVICES OF DAILY CARE, INCLUDING SHOPPING AND TRANSPORTATION, THAT THE CONSUMER AND THE DEPARTMENT REQUEST.**

**(D) "COMMUNITY ATTENDANT SERVICES AND SUPPORTS" MEANS ATTENDANT SERVICES AND SUPPORTS PROVIDED TO A CONSUMER:**

- (1) UNDER A PLAN OF SERVICES THAT IS:**
  - (I) BASED ON AN ASSESSMENT OF THE CONSUMER'S FUNCTIONAL NEED; AND**
  - (II) APPROVED BY THE CONSUMER OR THE CONSUMER'S REPRESENTATIVE; AND**
- (2) UNDER AN AGENCY-PROVIDER MODEL OR CONSUMER-DIRECTED MODEL.**

(E) **“CONSUMER” MEANS AN ELIGIBLE INDIVIDUAL WHO RECEIVES COMMUNITY ATTENDANT SERVICES AND SUPPORTS.**

(F) **“ELIGIBLE INDIVIDUAL” MEANS AN INDIVIDUAL WHO IS ELIGIBLE FOR THE PROGRAM UNDER § 15-803 OF THIS SUBTITLE.**

(G) **“FUNCTIONAL NEED” MEANS THE NEED FOR ATTENDANT SERVICES AND SUPPORTS BASED ON THE ABILITIES AND LIMITATIONS OF THE CONSUMER, REGARDLESS OF MEDICAL DIAGNOSIS OR CATEGORY OF DISABILITY.**

(H) **“PERSONAL ASSISTANT” MEANS AN INDIVIDUAL WHO DIRECTLY PROVIDES ATTENDANT SERVICES AND SUPPORTS.**

(I) **“PROGRAM” MEANS THE LIVING AT HOME WAIVER PROGRAM.**

(J) **“REPRESENTATIVE” MEANS A PARENT, FAMILY MEMBER, GUARDIAN, ADVOCATE, OR AUTHORIZED REPRESENTATIVE OF AN INDIVIDUAL.**

**15-802.**

(A) **SUBJECT TO THE STATE BUDGET, THE DEPARTMENT SHALL ADMINISTER A COMPREHENSIVE PROGRAM OF COMMUNITY ATTENDANT SERVICES AND SUPPORTS.**

(B) **THE PURPOSE OF THE PROGRAM IS TO PROVIDE ATTENDANT SERVICES AND SUPPORTS TO INDIVIDUALS WITH DISABILITIES WHO WILL BE DISCHARGED OR DIVERTED FROM NURSING FACILITIES WITH COMMUNITY ATTENDANT SERVICES AND SUPPORTS PROVIDED THROUGH A MEDICAID HOME AND COMMUNITY-BASED SERVICES WAIVER.**

(C) **THE DEPARTMENT SHALL SEEK INPUT FROM ELIGIBLE INDIVIDUALS, THE INDIVIDUALS’ REPRESENTATIVES, AND SERVICE PROVIDERS ABOUT THE PROGRAM.**

**15-803.**

**AN INDIVIDUAL IS ELIGIBLE FOR THE PROGRAM IF THE INDIVIDUAL:**

- (1) **HAS A COGNITIVE, SENSORY, OR PHYSICAL DISABILITY;**
- (2) **IS AT LEAST 18 YEARS OLD AND UNDER THE AGE OF ~~60~~ 65 YEARS AT THE TIME OF ENROLLMENT;**

- (3) REQUIRES THE LEVEL OF CARE PROVIDED IN A NURSING FACILITY;**
- (4) WILL BE DISCHARGED OR DIVERTED FROM A NURSING FACILITY;**
- (5) QUALIFIES FOR THE MEDICAID HOME AND COMMUNITY-BASED WAIVER SERVICES FOR ADULTS WITH PHYSICAL DISABILITIES;**
- (6) HAS A FUNCTIONAL NEED; AND**
- (7) HAS INCOME THAT DOES NOT EXCEED 300% OF SUPPLEMENTAL SECURITY INCOME.**

**15-804.**

**(A) EACH CONSUMER'S SERVICES SHALL BE BASED ON AN INDIVIDUALIZED SUPPORT PLAN THAT IS:**

- (1) JOINTLY DEVELOPED BY THE CONSUMER OR THE CONSUMER'S REPRESENTATIVE AND THE DEPARTMENT OR ITS DESIGNEE;**
- (2) APPROVED BY THE CONSUMER OR THE CONSUMER'S REPRESENTATIVE; AND**
- (3) GIVEN TO THE CONSUMER AND THE CONSUMER'S REPRESENTATIVE IN WRITING OR OTHER APPROPRIATE AND UNDERSTANDABLE FORMAT.**

**(B) THE INDIVIDUALIZED SUPPORT PLAN SHALL SPECIFY:**

- (1) THE SCOPE OF ATTENDANT SERVICES AND SUPPORTS AND THE HOURS THAT THE SERVICES ARE TO BE PROVIDED;**
- (2) ALTERNATIVE SOURCES FOR ATTENDANT SERVICES AND SUPPORTS, INCLUDING THE MEANS OF ENSURING SUBSTITUTE AND EMERGENCY ATTENDANT SERVICES AND SUPPORTS;**
- (3) A MECHANISM TO COORDINATE ATTENDANT SERVICES AND SUPPORTS WITH HEALTH CARE SERVICES THAT THE CONSUMER RECEIVES;**
- (4) AN INITIAL ASSESSMENT OF THE CONSUMER'S NEEDS AND THE FREQUENCY OF REASSESSMENT;**

**(5) THE METHOD OF SERVICE DELIVERY;**

**(6) THE DEGREE AND FREQUENCY OF SUPERVISION OF THE PERSONAL ASSISTANT NECESSARY FOR EFFECTIVE DELIVERY OF ATTENDANT SERVICES AND SUPPORTS;**

**(7) THE MEANS TO ADJUST SERVICES AND HOURS WHEN CHANGES ARE NEEDED; AND**

**(8) COMPLAINT AND APPEAL PROCEDURES.**

**15-805.**

**(A) (1) TO THE EXTENT POSSIBLE, A CONSUMER MAY SELECT, MANAGE, AND CONTROL THE CONSUMER'S COMMUNITY ATTENDANT SERVICES AND SUPPORTS.**

**(2) A CONSUMER MAY CHOOSE BETWEEN A CONSUMER-DIRECTED INDIVIDUAL PROVIDER MODEL OR AN AGENCY-PROVIDER MODEL.**

**(3) UNDER A CONSUMER-DIRECTED MODEL, A CONSUMER MAY USE A FISCAL AGENT TO OBTAIN SERVICES.**

**(B) (1) ATTENDANT SERVICES AND SUPPORTS SHALL BE DESIGNED TO ASSIST A CONSUMER IN ACCOMPLISHING ACTIVITIES OF DAILY LIVING AND HEALTH-RELATED FUNCTIONS THROUGH:**

**(I) HANDS-ON ASSISTANCE;**

**(II) SUPERVISION; OR**

**(III) CUEING, PROMPTING, OR REMINDING THE CONSUMER ABOUT AN ACTIVITY.**

**(2) ATTENDANT SERVICES AND SUPPORTS SHALL BE PROVIDED IN A CONSUMER'S HOME OR OTHER INDEPENDENT OR SUPPORTED LIVING ENVIRONMENT, INCLUDING SCHOOL, WORK, RECREATIONAL, AND RELIGIOUS SETTINGS.**

**(3) ATTENDANT SERVICES AND SUPPORTS MAY NOT BE PROVIDED IN:**

(I) A NURSING FACILITY;  
(II) AN INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED; OR

(III) A FACILITY THAT PROVIDES FOOD, SHELTER, AND TREATMENT SERVICES TO FOUR OR MORE INDIVIDUALS UNRELATED TO THE PROPRIETOR.

(C) COMMUNITY ATTENDANT SERVICES AND SUPPORTS SHALL BE AVAILABLE 24 HOURS A DAY, 7 DAYS A WEEK, AND PROVIDE BACKUP AND EMERGENCY COMMUNITY ATTENDANT SERVICES AND SUPPORTS WHEN NECESSARY.

(D) (1) A CONSUMER MAY SELECT OR HIRE ANYONE, INCLUDING A FAMILY MEMBER, AS A PERSONAL ASSISTANT.

(2) BASED ON CONSUMER RECOMMENDATIONS, THE DEPARTMENT MAY WAIVE CERTAIN QUALIFICATIONS REQUIRED BY REGULATION FOR A PERSONAL ASSISTANT, IF THE PERSONAL ASSISTANT IS A FAMILY MEMBER OR IS KNOWN AND CHOSEN BY THE CONSUMER.

(3) A FAMILY MEMBER, EXCEPT THE CONSUMER'S SPOUSE, MAY RECEIVE MEDICAL ASSISTANCE PAYMENTS FOR PROVIDING SERVICES.

(4) THE DEPARTMENT SHALL OFFER A CONSUMER TRAINING ON:

(I) HOW TO SELECT, MANAGE, AND DISMISS AN ATTENDANT OR PERSONAL ASSISTANT; AND

(II) THE FINANCIAL MANAGEMENT OF COMMUNITY ATTENDANT SERVICES AND SUPPORTS.

**15-806.**

**A CONSUMER IS ELIGIBLE FOR MEDICAL ASSISTANCE IF THE CONSUMER:**

(1) WOULD BE ELIGIBLE FOR MEDICAL ASSISTANCE IN A MEDICAL INSTITUTION OR NURSING HOME; AND

(2) NEEDS COMMUNITY ATTENDANT SERVICES AND SUPPORTS TO REMAIN IN OR TRANSITION TO THE COMMUNITY.

**15-807.**

**(A) THE DEPARTMENT SHALL ADOPT A QUALITY ASSURANCE SYSTEM FOR THE PROGRAM, CONSISTENT WITH FEDERAL REQUIREMENTS REGARDING QUALITY OF WAIVER SERVICES.**

**(B) THE QUALITY ASSURANCE SYSTEM SHALL INCLUDE MEANINGFUL CONSUMER INPUT, INCLUDING CONSUMER SURVEYS, THAT MEASURE THE EXTENT TO WHICH CONSUMERS RECEIVE SERVICES DESCRIBED IN THEIR INDIVIDUALIZED SUPPORT PLANS AND CONSUMER SATISFACTION WITH THE SERVICES.**

**15-808.**

**WITH SIGNIFICANT CONSUMER PARTICIPATION, THE DEPARTMENT SHALL ADOPT REGULATIONS NECESSARY TO CARRY OUT THIS SUBTITLE.**

**15-809.**

**(A) A COMMUNITY ATTENDANT SERVICES AND SUPPORTS PROVIDER SHALL INFORM THE CONSUMER OF THE CONSUMER'S RIGHTS WITH RESPECT TO:**

**(1) SELECTING, MANAGING, AND CHANGING THE CONSUMER'S COMMUNITY ATTENDANT SERVICES AND SUPPORTS; AND**

**(2) PRIVACY AND CONFIDENTIALITY.**

**(B) A CONSUMER WHO IS DISSATISFIED WITH THE PROGRAM MAY APPEAL TO THE DEPARTMENT.**

**SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2008.**

**Approved by the Governor, May 22, 2008.**