

SENATE BILL 876

O3, D5, J1

7lr1171

By: **Senator Kelley**

Introduced and read first time: February 3, 2017

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Individuals With Disabilities – Establishing Community–Based Long–Term**
3 **Services and Supports**
4 **(Maryland Disability Integration Act)**

5 FOR the purpose of requiring the Department of Disabilities to adopt a certain
6 comprehensive plan; requiring the Department to complete the comprehensive plan
7 on or before a certain date; requiring the Department to send a copy of certain
8 policies to certain individuals under certain circumstances; providing that public
9 entities may not discriminate against individuals who require long–term services
10 and supports by certain policies; requiring the Department to implement a certain
11 waiting list; requiring that the Department provide individuals on the waiting list
12 with certain information; requiring the Department to send information on the
13 waiting list to any interested member of the public under certain circumstances;
14 requiring the Department to adopt certain regulations; defining certain terms;
15 providing for the effective dates of this Act; and generally relating to
16 community–based long–term services and supports.

17 BY adding to

18 Article – Human Services

19 Section 7–801 through 7–804 to be under the new subtitle “Subtitle 8.
20 Community–Based Long–Term Services and Supports”

21 Annotated Code of Maryland

22 (2007 Volume and 2016 Supplement)

23 BY repealing and reenacting, without amendments,

24 Article – Human Services

25 Section 10–1001(a) and (c)

26 Annotated Code of Maryland

27 (2007 Volume and 2016 Supplement)

28 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Human Services
Section 7–801
Annotated Code of Maryland
(2007 Volume and 2016 Supplement)
(As enacted by Section 1 of this Act)

Preamble

WHEREAS, In enacting the Americans with Disabilities Act of 1990 (ADA), Congress both described the isolation and segregation of individuals with disabilities in institutions as a serious and pervasive form of discrimination and intended for the ADA's integration mandate to be interpreted in a manner that ensures that all individuals with disabilities who are eligible for institutional placement are able to exercise a right to receive long-term services and supports; and

WHEREAS, The holdings of the United States Supreme Court in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999) and in companion cases have clearly articulated that unjustified segregation of individuals with disabilities of all ages constitutes discrimination in violation of Title II of the ADA; and that individuals with disabilities of all ages have a protected civil right to receive state funded long-term services and supports in the community rather than in institutions; and

WHEREAS, Section 7–132 of the Human Services Article requires that the State Disabilities Plan provide for the coordination of support services that ensure compliance with the federal ADA and other relevant federal and State provisions intended to protect the civil rights of individuals with disabilities of all ages and that are necessary for individuals with disabilities to achieve maximum participation in the mainstream of the community in the most integrated setting possible; and

WHEREAS, The United States Department of Justice, the federal agency responsible for interpreting and enforcing the ADA, has stated repeatedly that both the ADA and the *Olmstead* decision extend to individuals at serious risk of institutionalization, even when the risk is not imminent; and

WHEREAS, Current State policy effectively requires eligible individuals with disabilities of all ages to be segregated in institutions as a condition precedent in order to receive long-term services and supports in the community; and

WHEREAS, As a result of current State policy, eligible individuals with disabilities of all ages who live in the community and are in need of long-term services and supports find themselves at serious risk for institutional placement as a result of being denied long-term services and supports in the community; and

WHEREAS, The continuing existence of unfair and unnecessary institutionalization denies individuals with disabilities of all ages the opportunity to live and participate on an equal basis in the community and costs the State millions of dollars in unnecessary spending related to perpetuation dependency and unnecessary confinement; and

1 WHEREAS, The State continues to approach decisions regarding long-term services
2 and supports from social welfare and budgetary perspectives, but the purpose of the ADA
3 requires the State to approach these decisions from a civil rights perspective; and

4 WHEREAS, The lack of adequate community-based long-term services and
5 supports in the State has imperiled the civil rights of individuals with disabilities of all
6 ages, and has undermined the very purpose of the ADA; now, therefore,

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
8 That the Laws of Maryland read as follows:

9 **Article – Human Services**

10 **SUBTITLE 8. COMMUNITY-BASED LONG-TERM SERVICES AND SUPPORTS.**

11 **7-801.**

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

14 (B) “COMMUNITY-BASED LONG-TERM SERVICES AND SUPPORTS” MEANS
15 LONG-TERM SERVICES AND SUPPORTS THAT SERVE INDIVIDUALS IN THEIR HOMES
16 AND COMMUNITIES AND NOT IN INSTITUTIONS.

17 (C) “LONG-TERM SERVICES AND SUPPORTS” HAS THE MEANING STATED IN
18 § 10-1001 OF THIS ARTICLE.

19 **7-802.**

20 (A) THE DEPARTMENT SHALL ADOPT A COMPREHENSIVE PLAN TO PROVIDE
21 COMMUNITY-BASED LONG-TERM SERVICES AND SUPPORTS FOR INDIVIDUALS WHO
22 REQUIRE LONG-TERM SERVICES AND SUPPORTS.

23 (B) THE PLAN ADOPTED UNDER SUBSECTION (A) OF THIS SECTION SHALL:

24 (1) INCLUDE A SPECIFIC AND REASONABLE TIME FRAME AND
25 MEASURABLE GOALS BY WHICH THE PROGRESS TOWARDS COMPLETION OF THE
26 PLAN CAN BE MEASURED; AND

27 (2) BE FUNDED USING FUNDS FROM ANY SOURCE, INCLUDING STATE
28 APPROPRIATIONS AND FEDERAL GRANTS.

29 10-1001.

(a) In this subtitle the following words have the meanings indicated.

(c) “Long-term services and supports” means the broad range of assistance needed by older adults and individuals with disabilities.

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

Article – Human Services

7–801.

(a) In this subtitle the following words have the meanings indicated.

(b) “Community-based long-term services and supports” means long-term services and supports that serve individuals in their homes and communities and not in institutions.

(c) “Long-term services and supports” has the meaning stated in § 10–1001 of this article.

(D) “PUBLIC ENTITY” MEANS A POLITICAL SUBDIVISION OF THE STATE OR A UNIT OF THE STATE OR A LOCAL GOVERNMENT.

7–803.

A PUBLIC ENTITY MAY NOT DISCRIMINATE AGAINST AN INDIVIDUAL WHO REQUIRES LONG-TERM SERVICES AND SUPPORTS, INCLUDING BY ADOPTING ANY OF THE FOLLOWING POLICIES THAT PREVENT, TEND TO PREVENT, OR RESTRICT THE ACCESS OF AN INDIVIDUAL WHO REQUIRES LONG-TERM SERVICES AND SUPPORTS FROM RECEIVING COMMUNITY-BASED LONG-TERM SERVICES AND SUPPORTS:

(1) IMPOSING A SERVICE OR COST CAP;

(2) FAILING TO ESTABLISH AN ADEQUATE RATE OR OTHER PAYMENT STRUCTURE NECESSARY TO ENSURE THE AVAILABILITY OF A WORKFORCE SUFFICIENT TO SERVE INDIVIDUALS IN THEIR HOMES AND COMMUNITIES;

(3) REQUIRING THAT AN INDIVIDUAL RECEIVE NURSING CARE IN AN INSTITUTION;

(4) FAILING TO ADOPT A PROCEDURE ENSURING THAT AN INDIVIDUAL WHO REQUIRES LONG-TERM SERVICES AND SUPPORTS IS OFFERED COMMUNITY-BASED LONG-TERM SERVICES AND SUPPORTS PRIOR TO INSTITUTIONALIZATION; AND

(5) FAILING TO MAKE A REASONABLE MODIFICATION IN ANY POLICY, PRACTICE, OR PROCEDURE NECESSARY TO ALLOW AN INDIVIDUAL TO RECEIVE COMMUNITY-BASED LONG-TERM SERVICES AND SUPPORTS.

SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Human Services

7–804.

(A) THE DEPARTMENT SHALL IMPLEMENT A WAITING LIST FOR INDIVIDUALS WHO ARE SEEKING COMMUNITY-BASED LONG-TERM SERVICES AND SUPPORTS THAT:

(1) USES VALID TESTING INSTRUMENTS TO ASSESS THE NEED FOR SERVICES ON AN OBJECTIVE SCALE, INCLUDING:

(I) CAPTURING BASELINE INDIVIDUAL ASSESSMENT INFORMATION IN CONSISTENT, CLEARLY DEFINED, AND MEASURABLE TERMS;

(II) ANALYZING DATA TO FIND INFORMATION PREDICTIVE OF FUTURE COMMUNITY-BASED LONG-TERM SERVICES AND SUPPORTS NEEDS; AND

(III) PERIODICALLY EVALUATING THE DATA COLLECTION SYSTEM TO ENSURE CONSISTENCY, RELIABILITY, AND VALIDITY OF DATA COLLECTED;

(2) ALLOCATES SERVICES ACCORDING TO DOCUMENTED NEED; AND

(3) PRIORITIZES SERVICES AND SUPPORTS FOR INDIVIDUALS WITH THE GREATEST DOCUMENTED NEEDS.

(B) THE DEPARTMENT SHALL PROVIDE INDIVIDUALS ON THE WAITING LIST A COPY OF THE DEPARTMENT’S WAITING LIST POLICIES AND SHALL INFORM THOSE INDIVIDUALS OF:

(1) THEIR STATUS ON THE WAITING LIST;

(2) HOW THAT STATUS WAS DETERMINED;

1 **(3) HOW QUICKLY, WITHIN REASONABLE PARAMETERS, THE**
2 **INDIVIDUAL MAY EXPECT TO RECEIVE COMMUNITY-BASED LONG-TERM SERVICES**
3 **AND SUPPORTS; AND**

4 **(4) WHAT SERVICES AND SUPPORTS THE INDIVIDUAL IS LIKELY TO**
5 **RECEIVE.**

6 **(C) THE DEPARTMENT SHALL SEND A COPY OF THE WAITING LIST POLICIES**
7 **TO ANY INTERESTED MEMBER OF THE PUBLIC IF A COPY IS REQUESTED.**

8 **(D) THE DEPARTMENT SHALL ADOPT REGULATIONS NECESSARY TO CARRY**
9 **OUT THE PROVISIONS OF LAW IN THIS SECTION.**

10 SECTION 4. AND BE IT FURTHER ENACTED, That the Department of
11 Disabilities shall complete the plan required under Section 1 of this Act on or before July
12 1, 2018.

13 SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
14 effect July 1, 2018.

15 SECTION 6. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take
16 effect July 1, 2019.

17 SECTION 7. AND BE IT FURTHER ENACTED, That, except as provided in
18 Sections 5 and 6 of this Act, this Act shall take effect July 1, 2017.