

2013 -- H 5931

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO HUMAN SERVICES - PUBLIC ASSISTANCE ACT

Introduced By: Representative Jan Malik

Date Introduced: March 27, 2013

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 40-6-27 of the General Laws in Chapter 40-6 entitled "Public
2 Assistance Act" is hereby amended to read as follows:

3 **40-6-27. Supplemental security income. --** (a) (1) The director of the department is
4 hereby authorized to enter into agreements on behalf of the state with the secretary of the
5 Department of Health and Human Services or other appropriate federal officials, under the
6 supplementary and security income (SSI) program established by title XVI of the Social Security
7 Act, 42 U.S.C. section 1381 et seq., concerning the administration and determination of eligibility
8 for SSI benefits for residents of this state, except as otherwise provided in this section. The state's
9 monthly share of supplementary assistance to the supplementary security income program shall
10 be as follows:

11 (i) Individual living alone: \$39.92

12 (ii) Individual living with others: \$51.92

13 (iii) Couple living alone: \$79.38

14 (iv) Couple living with others: \$97.30

15 (v) Individual living in state licensed assisted living residence: \$332.00 [\\$538.00](#)

16 (vi) Individual living in state licensed supportive residential care settings that, depending
17 on the population served, meet the standards set by the department of human services in
18 conjunction with the department(s) of children, youth and families, elderly affairs and/or
19 behavioral healthcare, developmental disabilities and hospitals: \$300.00.

1 Provided, however, that ~~the department of human services shall by regulation reduce, effective~~
2 ~~January 1, 2009, the state's monthly share of supplementary assistance to the supplementary~~
3 ~~security income program for each of the above listed payment levels, by the same value as the~~
4 ~~annual federal cost of living adjustment to be published by the federal social security~~
5 ~~administration in October 2008 and becoming effective on January 1, 2009, as determined under~~
6 ~~the provisions of title XVI of the federal social security act [42 U.S.C. section 1381 et seq.] and~~
7 ~~provided further, that it is the intent of the general assembly that the January 1, 2009 reduction in~~
8 ~~the state's monthly share shall not cause a reduction in the combined federal and state payment~~
9 ~~level for each category of recipients in effect in the month of December 2008; effective January~~
10 1, 2014, and each January 1st thereafter, the department of human services shall increase the
11 payment for individuals living in state licensed assisted living, subject to appropriation, by a
12 percentage amount equal to the percentage rise in the United States consumer price index (CPI)
13 for January 1st of that year; provided further, that the department of human services is authorized
14 and directed to provide for payments to recipients in accordance with the above directives.

15 (2) As of July 1, 2010, state supplement payments shall not be federally administered and
16 shall be paid directly by the department of human services to the recipient.

17 (3) Individuals living in institutions shall receive a twenty dollar (\$20.00) per month
18 personal needs allowance from the state which shall be in addition to the personal needs
19 allowance allowed by the Social Security Act, 42 U.S.C. section 301 et seq.

20 (4) Individuals living in state licensed supportive residential care settings and assisted
21 living residences who are receiving SSI shall be allowed to retain a minimum personal needs
22 allowance of fifty-five dollars (\$55.00) per month from their SSI monthly benefit prior to
23 payment of any monthly fees.

24 (5) To ensure that supportive residential care or an assisted living residence is a safe and
25 appropriate service setting, the department is authorized and directed to make a determination of
26 the medical need and whether a setting provides the appropriate services for those persons who:

27 (i) Have applied for or are receiving SSI, and who apply for admission to supportive
28 residential care setting and assisted living residences on or after October 1, 1998; or

29 (ii) Who are residing in supportive residential care settings and assisted living residences,
30 and who apply for or begin to receive SSI on or after October 1, 1998.

31 (6) The process for determining medical need required by subsection (4) of this section
32 shall be developed by the office of health and human services in collaboration with the
33 departments of that office and shall be implemented in a manner that furthers the goals of
34 establishing a statewide coordinated long-term care entry system as required pursuant to the

1 Global Consumer Choice Compact Waiver.

2 (7) To assure access to high quality coordinated services, the department is further
3 authorized and directed to establish rules specifying the payment certification standards that must
4 be met by those state licensed supportive residential care settings and assisted living residences
5 admitting or serving any persons eligible for state-funded supplementary assistance under this
6 section. Such payment certification standards shall define:

7 (i) The scope and frequency of resident assessments, the development and
8 implementation of individualized service plans, staffing levels and qualifications, resident
9 monitoring, service coordination, safety risk management and disclosure, and any other related
10 areas;

11 (ii) The procedures for determining whether the payment certifications standards have
12 been met; and

13 (iii) The criteria and process for granting a one time, short-term good cause exemption
14 from the payment certification standards to a licensed supportive residential care setting or
15 assisted living residence that provides documented evidence indicating that meeting or failing to
16 meet said standards poses an undue hardship on any person eligible under this section who is a
17 prospective or current resident.

18 (8) The payment certification standards required by this section shall be developed in
19 collaboration by the departments, under the direction of the executive office of health and human
20 services, so as to ensure that they comply with applicable licensure regulations either in effect or
21 in development.

22 (b) The department is authorized and directed to provide additional assistance to
23 individuals eligible for SSI benefits for:

24 (1) Moving costs or other expenses as a result of an emergency of a catastrophic nature
25 which is defined as a fire or natural disaster; and

26 (2) Lost or stolen SSI benefit checks or proceeds of them; and

27 (3) Assistance payments to SSI eligible individuals in need because of the application of
28 federal SSI regulations regarding estranged spouses; and the department shall provide such
29 assistance in a form and amount, which the department shall by regulation determine.

30 SECTION 2. Section 40-8.9-9 of the General Laws in Chapter 40-8.9 entitled "Medical
31 Assistance - Long-Term Care Service and Finance Reform" is hereby amended to read as
32 follows:

33 **40-8.9-9. Long-term care re-balancing system reform goal.** -- (a) Notwithstanding any
34 other provision of state law, the department of human services is authorized and directed to apply

1 for and obtain any necessary waiver(s), waiver amendment(s) and/or state plan amendments from
2 the secretary of the United States department of health and human services, and to promulgate
3 rules necessary to adopt an affirmative plan of program design and implementation that addresses
4 the goal of allocating a minimum of fifty percent (50%) of Medicaid long-term care funding for
5 persons aged sixty-five (65) and over and adults with disabilities, in addition to services for
6 persons with developmental disabilities and mental disabilities, to home and community-based
7 care on or before December 31, 2013; provided, further, the executive office of health and human
8 services shall report annually as part of its budget submission, the percentage distribution
9 between institutional care and home and community-based care by population and shall report
10 current and projected waiting lists for long-term care and home and community-based care
11 services. The department is further authorized and directed to prioritize investments in home and
12 community-based care and to maintain the integrity and financial viability of all current long-
13 term care services while pursuing this goal.

14 (b) The reformed long-term care system re-balancing goal is person-centered and
15 encourages individual self-determination, family involvement, interagency collaboration, and
16 individual choice through the provision of highly specialized and individually tailored home-
17 based services. Additionally, individuals with severe behavioral, physical, or developmental
18 disabilities must have the opportunity to live safe and healthful lives through access to a wide
19 range of supportive services in an array of community-based settings, regardless of the
20 complexity of their medical condition, the severity of their disability, or the challenges of their
21 behavior. Delivery of services and supports in less costly and less restrictive community settings,
22 will enable children, adolescents and adults to be able to curtail, delay or avoid lengthy stays in
23 long-term care institutions, such as behavioral health residential treatment facilities, long-term
24 care hospitals, intermediate care facilities and/or skilled nursing facilities.

25 (c) Pursuant to federal authority procured under section 42-7.2-16 of the general laws,
26 the department of human services is directed and authorized to adopt a tiered set of criteria to be
27 used to determine eligibility for services. Such criteria shall be developed in collaboration with
28 the state's health and human services departments and, to the extent feasible, any consumer
29 group, advisory board, or other entity designated for such purposes, and shall encompass
30 eligibility determinations for long-term care services in nursing facilities, hospitals, and
31 intermediate care facilities for the mentally retarded as well as home and community-based
32 alternatives, and shall provide a common standard of income eligibility for both institutional and
33 home and community-based care. The department is, subject to prior approval of the general
34 assembly, authorized to adopt criteria for admission to a nursing facility, hospital, or

1 intermediate care facility for the mentally retarded that are more stringent than those employed
2 for access to home and community-based services. The department is also authorized to
3 promulgate rules that define the frequency of re-assessments for services provided for under this
4 section. Legislatively approved levels of care may be applied in accordance with the following:

5 (1) The department shall apply pre-waiver level of care criteria for any Medicaid
6 recipient eligible for a nursing facility, hospital, or intermediate care facility for the mentally
7 retarded as of June 30, 2009, unless the recipient transitions to home and community based
8 services because he or she: (a) Improves to a level where he/she would no longer meet the pre-
9 waiver level of care criteria; or (b) The individual chooses home and community based services
10 over the nursing facility, hospital, or intermediate care facility for the mentally retarded. For the
11 purposes of this section, a failed community placement, as defined in regulations promulgated by
12 the department, shall be considered a condition of clinical eligibility for the highest level of care.
13 The department shall confer with the long-term care ombudsperson with respect to the
14 determination of a failed placement under the ombudsperson's jurisdiction. Should any Medicaid
15 recipient eligible for a nursing facility, hospital, or intermediate care facility for the mentally
16 retarded as of June 30, 2009 receive a determination of a failed community placement, the
17 recipient shall have access to the highest level of care; furthermore, a recipient who has
18 experienced a failed community placement shall be transitioned back into his or her former
19 nursing home, hospital, or intermediate care facility for the mentally retarded whenever possible.
20 Additionally, residents shall only be moved from a nursing home, hospital, or intermediate care
21 facility for the mentally retarded in a manner consistent with applicable state and federal laws.

22 (2) Any Medicaid recipient eligible for the highest level of care who voluntarily leaves a
23 nursing home, hospital, or intermediate care facility for the mentally retarded shall not be subject
24 to any wait list for home and community based services.

25 (3) No nursing home, hospital, or intermediate care facility for the mentally retarded
26 shall be denied payment for services rendered to a Medicaid recipient on the grounds that the
27 recipient does not meet level of care criteria unless and until the department of human services
28 has: (i) performed an individual assessment of the recipient at issue and provided written notice to
29 the nursing home, hospital, or intermediate care facility for the mentally retarded that the
30 recipient does not meet level of care criteria; and (ii) the recipient has either appealed that level of
31 care determination and been unsuccessful, or any appeal period available to the recipient
32 regarding that level of care determination has expired.

33 (d) The department of human services is further authorized and directed to consolidate
34 all home and community-based services currently provided pursuant to section 1915(c) of title

1 XIX of the United States Code into a single system of home and community-based services that
2 include options for consumer direction and shared living. The resulting single home and
3 community-based services system shall replace and supersede all section 1915(c) programs when
4 fully implemented. Notwithstanding the foregoing, the resulting single program home and
5 community-based services system shall include the continued funding of assisted living services
6 at any assisted living facility financed by the Rhode Island housing and mortgage finance
7 corporation prior to January 1, 2006, and shall be in accordance with chapter 66.8 of title 42 of
8 the general laws as long as assisted living services are a covered Medicaid benefit.

9 (e) The department of human services is authorized to promulgate rules that permit
10 certain optional services including, but not limited to, homemaker services, home modifications,
11 respite, and physical therapy evaluations to be offered subject to availability of state-appropriated
12 funding for these purposes.

13 (f) To promote the expansion of home and community-based service capacity, the
14 department of human services is authorized and directed to pursue rate reform for homemaker,
15 personal care (home health aide) and adult day care services, as follows:

16 (1) A prospective base adjustment effective, not later than July 1, 2008, across all
17 departments and programs, of ten percent (10%) of the existing standard or average rate,
18 contingent upon a demonstrated increase in the state-funded or Medicaid caseload by June 30,
19 2009;

20 (2) Development, not later than September 30, 2008, of certification standards
21 supporting and defining targeted rate increments to encourage service specialization and
22 scheduling accommodations including, but not limited to, medication and pain management,
23 wound management, certified Alzheimer's Syndrome treatment and support programs, and shift
24 differentials for night and week-end services; and

25 (3) Development and submission to the governor and the general assembly, not later than
26 December 31, 2008, of a proposed rate-setting methodology for home and community-based
27 services to assure coverage of the base cost of service delivery as well as reasonable coverage of
28 changes in cost caused by wage inflation.

29 (g) The department, in collaboration with the executive office of human services, shall
30 implement a long-term care options counseling program to provide individuals or their
31 representatives, or both, with long-term care consultations that shall include, at a minimum,
32 information about: long-term care options, sources and methods of both public and private
33 payment for long-term care services and an assessment of an individual's functional capabilities
34 and opportunities for maximizing independence. Each individual admitted to or seeking

1 admission to a long-term care facility regardless of the payment source shall be informed by the
2 facility of the availability of the long-term care options counseling program and shall be provided
3 with long-term care options consultation if they so request. Each individual who applies for
4 Medicaid long-term care services shall be provided with a long-term care consultation.

5 (h) The department of human services is also authorized, subject to availability of
6 appropriation of funding, to pay for certain expenses necessary to transition residents back to the
7 community; provided, however, payments shall not exceed an annual or per person amount.

8 (i) To assure the continued financial viability of nursing facilities, the department of
9 human services is authorized and directed to develop a proposal for revisions to section 40-8-19
10 that reflect the changes in cost and resident acuity that result from implementation of this re-
11 balancing goal. Said proposal shall be submitted to the governor and the general assembly on or
12 before January 1, 2010.

13 (j) To ensure persons with long-term care needs who remain living at home have
14 adequate resources to deal with housing maintenance and unanticipated housing related costs, the
15 department of human services is authorized to develop higher resource eligibility limits for
16 persons on home and community waiver services who are living in their own homes or rental
17 units.

18 (k) To promote increased access to assisted living services for Medicaid beneficiaries and
19 to accelerate the rebalancing of the long-term care system, the executive office of health and
20 human services (“executive office”) shall pursue reimbursement rate reform for assisted living. In
21 pursuing assisted living reimbursement rate reform, the executive office shall:

22 (1) Solicit input and consult regularly with representatives from relevant stakeholder
23 groups, including, but not limited to, the Rhode Island assisted living association and leading age
24 RI;

25 (2) Include in the assisted living reimbursement rate reform plan, at a minimum, the
26 following elements:

27 (i) A tiered, acuity based reimbursement system for Medicaid assisted living services to
28 replace the existing per-diem flat rate. In pursuing a tiered reimbursement system, the office shall
29 ensure that the lowest payment tier is no lower than the flat rate in existence on January 1, 2013;

30 (ii) Annual adjustments to the medicaid assisted living services reimbursement rates by a
31 percentage amount equal to the percentage rise in the United States consumer price index (CPI)
32 for January 1st of that year.

33 (3) Explore options for an enhanced medicaid services reimbursement rate for assisted
34 living residences that are required by regulation to offer single-occupant apartments;

1 (4) Provide the speaker of the house, senate president, chairperson of the house
2 committee on health, education and welfare and chairperson of the senate committee on health
3 and human services with an assisted living rate reform progress report no later than October 1,
4 2013;

5 (5) The executive office is hereby authorized and directed to file a state plan amendment
6 with the United States department of health and human services in order to implement assisted
7 living reimbursement rate reform no later than January 1, 2014.

8 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HUMAN SERVICES - PUBLIC ASSISTANCE ACT

1 This act would increase supplemental security income for individuals living in state
2 licensed assisted living residences and would tie future increases to the percentage rise in the
3 Consumer Price Index. This act would also require the Executive Office of Health and Human
4 Services to pursue and implement assisted living reimbursement rate reform by January 1, 2014.

5 This act would take effect upon passage.

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