

2014 -- S 2471

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO HUMAN SERVICES - PUBLIC ASSISTANCE ACT

Introduced By: Senators DiPalma, Felag, Ottiano, Bates, and Pichardo

Date Introduced: February 27, 2014

Referred To: Senate 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,~~
2 ~~effective January 1, 2009, the state's monthly share of supplementary assistance to the~~
3 ~~supplementary security income program for each of the above listed payment levels, by the same~~
4 ~~value as the 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; provided further,~~
10 ~~that the department of human services is authorized and directed to provide for payments to~~
11 ~~recipients in accordance with the above directives.~~

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

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

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

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

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

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

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

33 (7) To assure access to high quality coordinated services, the department is further
34 authorized and directed to establish rules specifying the payment certification standards that must

1 be met by those state licensed supportive residential care settings and assisted living residences
2 admitting or serving any persons eligible for state-funded supplementary assistance under this
3 section. Such payment certification standards shall define:

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

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

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

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

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

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

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

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

27 SECTION 2. Section 40-6-27.2 of the General Laws in Chapter 40-6 entitled "Public
28 Assistance Act" is hereby repealed.

29 ~~40-6-27.2. Supplementary cash assistance payment for certain supplemental security~~
30 ~~income recipients. -- There is hereby established a \$206 monthly payment for disabled and~~
31 ~~elderly individuals who, on or after July 1, 2012, receive the state supplementary assistance~~
32 ~~payment for an individual in state licensed assisted living residence under section 40-6-27 and~~
33 ~~further reside in an assisted living facility that is not eligible to receive funding under Title XIX~~
34 ~~of the Social Security Act, 42 U.S.C. section 1381 et seq.~~

1 SECTION 3. Section 40-8.9-9 of the General Laws in Chapter 40-8.9 entitled "Medical
2 Assistance - Long-Term Care Service and Finance Reform" is hereby amended to read as
3 follows:

4 **40-8.9-9. Long-term care re-balancing system reform goal.** -- (a) Notwithstanding any
5 other provision of state law, the department of human services is authorized and directed to apply
6 for and obtain any necessary waiver(s), waiver amendment(s) and/or state plan amendments from
7 the secretary of the United States department of health and human services, and to promulgate
8 rules necessary to adopt an affirmative plan of program design and implementation that addresses
9 the goal of allocating a minimum of fifty percent (50%) of Medicaid long-term care funding for
10 persons aged sixty-five (65) and over and adults with disabilities, in addition to services for
11 persons with developmental disabilities and mental disabilities, to home and community-based
12 care on or before December 31, 2013; provided, further, the executive office of health and human
13 services shall report annually as part of its budget submission, the percentage distribution
14 between institutional care and home and community-based care by population and shall report
15 current and projected waiting lists for long-term care and home and community-based care
16 services. The department is further authorized and directed to prioritize investments in home and
17 community-based care and to maintain the integrity and financial viability of all current long-
18 term care services while pursuing this goal.

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

30 (c) Pursuant to federal authority procured under section 42-7.2-16 of the general laws,
31 the department of human services is directed and authorized to adopt a tiered set of criteria to be
32 used to determine eligibility for services. Such criteria shall be developed in collaboration with
33 the state's health and human services departments and, to the extent feasible, any consumer
34 group, advisory board, or other entity designated for such purposes, and shall encompass

1 eligibility determinations for long-term care services in nursing facilities, hospitals, and
2 intermediate care facilities for the mentally retarded as well as home and community-based
3 alternatives, and shall provide a common standard of income eligibility for both institutional and
4 home and community-based care. The department is, subject to prior approval of the general
5 assembly, authorized to adopt criteria for admission to a nursing facility, hospital, or
6 intermediate care facility for the mentally retarded that are more stringent than those employed
7 for access to home and community-based services. The department is also authorized to
8 promulgate rules that define the frequency of re-assessments for services provided for under this
9 section. Legislatively approved levels of care may be applied in accordance with the following:

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

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

30 (3) No nursing home, hospital, or intermediate care facility for the mentally retarded
31 shall be denied payment for services rendered to a Medicaid recipient on the grounds that the
32 recipient does not meet level of care criteria unless and until the department of human services
33 has: (i) performed an individual assessment of the recipient at issue and provided written notice to
34 the nursing home, hospital, or intermediate care facility for the mentally retarded that the

1 recipient does not meet level of care criteria; and (ii) the recipient has either appealed that level of
2 care determination and been unsuccessful, or any appeal period available to the recipient
3 regarding that level of care determination has expired.

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

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

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

21 (1) A prospective base adjustment effective, not later than July 1, 2008, across all
22 departments and programs, of ten percent (10%) of the existing standard or average rate,
23 contingent upon a demonstrated increase in the state-funded or Medicaid caseload by June 30,
24 2009;

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

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

34 (g) The department, in collaboration with the executive office of human services, shall

1 implement a long-term care options counseling program to provide individuals or their
2 representatives, or both, with long-term care consultations that shall include, at a minimum,
3 information about: long-term care options, sources and methods of both public and private
4 payment for long-term care services and an assessment of an individual's functional capabilities
5 and opportunities for maximizing independence. Each individual admitted to or seeking
6 admission to a long-term care facility regardless of the payment source shall be informed by the
7 facility of the availability of the long-term care options counseling program and shall be provided
8 with long-term care options consultation if they so request. Each individual who applies for
9 Medicaid long-term care services shall be provided with a long-term care consultation.

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

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

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

23 (k) To promote increased access to assisted living services for Medicaid beneficiaries and
24 to accelerate the rebalancing of the long-term care system, the Executive Office of Health and
25 Human Services (“executive office”) shall pursue reimbursement rate reform for assisted living.
26 In pursuing assisted living reimbursement rate reform, the executive office shall:

27 (1) Solicit input and consult regularly with representatives from relevant stakeholder
28 groups, including, but not limited to, the Rhode Assisted Living Association and Leading Age RI;

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

31 (i) A tiered, acuity based reimbursement system for Medicaid assisted living services to
32 replace the existing per diem flat rate. In pursuing a tiered reimbursement system, the executive
33 office shall ensure that the lowest payment tier is no lower than the flat rate in existence on
34 January 1, 2014;

1 (ii) Annual adjustments to the Medicaid assisted living services reimbursement rates by a
2 percentage amount equal to the change in a recognized national long-term care inflation index
3 to be applied on October 1 of each year;

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

6 (4) Explore options for reimbursement rate adjustments for state licensed assisted
7 living residences that are not eligible to receive funding under Title XIX of the Social
8 Security Act, 42 U.S.C. 1381 et seq.;

9 (5) Provide the Speaker of the House, Senate President, Chairperson of the House
10 Committee on Health Education and Welfare, and Chairperson of the Senate Committee on
11 Health and Human Services with an assisted living rate reform progress report no later than
12 October 1, 2014;

13 (6) The Executive Office is hereby authorized and directed to file a state plan amendment
14 with the U.S. Department of Health and Human Services in order to implement assisted living
15 reimbursement rate reform no later than January 1, 2015.

16 SECTION 4. This act shall take effect upon passage.

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LC003971
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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 eliminates unnecessary language regarding supplementary assistance and
- 2 increases access to assisted living services for Medicaid beneficiaries.
- 3 This act would take effect upon passage.

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