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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO HUMAN SERVICES -- QUALITY SELF-DIRECTED SERVICES -- PUBLIC OFFICERS AND EMPLOYEES -- INDIVIDUAL PROVIDERS OF DIRECT SUPPORT SERVICES

Introduced By: Senators Goodwin, and Euer

Date Introduced: March 20, 2018

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Findings and declarations. The general assembly hereby finds and declares
2 as follows:

3 (1) Ensuring that seniors and people with disabilities in Rhode Island have access to long-
4 term services and supports in home and community based settings is an issue of statewide
5 concern.

6 (2) It is in the best interest of the state to create a variety of home and community based
7 service options in order to maximize consumer choice and provide the right care, in the right
8 setting, at the right time, for individuals with long-term care service and supports needs.

9 (3) In 2015, seventy-seven percent (77%) of Medicaid spending for long-term services
10 and supports for older adults and adults with physical disabilities in Rhode Island went to
11 institutional care rather than home and community based care, compared with a national average
12 of almost forty-four percent (44%) making Rhode Island one of the least balanced states in the
13 country.

14 (4) State efforts to give people more cost-effective choices of Medicaid-funded long-term
15 services and supports would be greatly aided by offering an independent provider home care
16 option for people with disabilities and seniors and implementing the proper infrastructure to
17 support the program.

18 (5) The implementation of a successful individual provider home care option will rely on

1 the ability to attract and maintain a robust, well qualified, adequately trained and compensated
2 workforce to deliver high quality services and meet the increasing demand for these services due
3 to the projected increase in the state's aging population.

4 SECTION 2. Title 36 of the General Laws entitled "PUBLIC OFFICERS AND
5 EMPLOYEES" is hereby amended by adding thereto the following chapter:

6 CHAPTER 11.1

7 INDIVIDUAL PROVIDERS OF DIRECT SUPPORT SERVICES

8 **36-11.1-1. Definitions.**

9 For the purposes of this chapter:

10 (1) "Direct support services" has the meaning given to it under § 40-8.14-1.

11 (2) "Individual provider" has the meaning given to it under § 40-8.14-1.

12 (3) "Participant" has the meaning given to it under § 40-8.14-1.

13 (4) "Participant's representative" has the meaning given to it under § 40-8.14-1.

14 **36-11.1-2. Rights of individual providers and participants.**

15 For the purposes of the Rhode Island state labor relations act, under chapter 11.1 of title
16 36, individual providers shall be considered, by virtue of this chapter, employees within the
17 meaning of § 28-7-3 and state employees within the meaning of § 36-11-1 employed by the
18 director of human services or the director's representative. For purposes of this chapter, no
19 individual provider shall be deemed excluded from the definition of "employee" under § 28-7-
20 3(3)(ii) because they provide care to a family member or because they are in domestic service in a
21 person's home. This section does not require the treatment of individual providers as public
22 employees for any other purpose. Individual providers are not state employees for purposes of
23 chapter 31 of title 9 or any similar law. Chapter 11.1 of title 36 shall apply to individual providers
24 except as otherwise provided in this chapter. Notwithstanding § 36-11-1.1, chapter 11.1 of title 36
25 shall apply to individual providers regardless of part-time, full-time, casual, or seasonal
26 employment status.

27 **36-11.1-3. Scope of meet and negotiate obligation.**

28 If an exclusive representative is certified pursuant to this chapter, the mutual rights and
29 obligations of the state and an exclusive representative of individual providers to meet and
30 negotiate regarding terms and conditions shall extend to the subjects covered under § 40-8.14-
31 4(c), but shall not include those subjects reserved to participants or participants' representatives
32 by § 36-11.1-4.

33 **36-11.1-4. Rights of covered program participants.**

34 No provision of any agreement reached between the state and any exclusive

1 representative of individual providers, nor any arbitration award, shall interfere with the rights of
2 participants or participants' representatives to select, hire, direct, supervise, and terminate the
3 employment of their individual providers; to manage an individual service budget regarding the
4 amounts and types of authorized goods or services received; or to receive direct support services
5 from individual providers not referred to them through a state registry.

6 **36-11.1-5. Legislative action on agreements.**

7 Any agreement reached between the state and the exclusive representative of individual
8 providers under chapter 11.1 of title 36 shall be submitted to the general assembly to be accepted
9 or rejected in accordance with § 36-6-5.

10 **36-11.1-6. Strikes prohibited.**

11 Individual providers shall be subject to the prohibition on strikes applied to state
12 employees under § 36-11-6.

13 **36-11.1-7. Interest arbitration.**

14 Individual providers shall be subject to the interest arbitration procedures applied to
15 essential employees under §§ 36-11-7.1 through 36-11-11.

16 **36-11.1-8. Appropriate unit.**

17 The only appropriate unit for individual providers shall be a statewide unit of all
18 individual providers. The unit shall be treated as an appropriate unit under § 28-7-15. Individual
19 providers who are related to their participant or their participant's representative shall not for such
20 reason be excluded from the appropriate unit.

21 **36-11.1-9. List access.**

22 Beginning October 1, 2018, upon a showing made to the chairperson of the labor
23 relations board by any employee organization wishing to represent the appropriate unit of
24 individual providers that at least fifty (50) individual providers support such representation, the
25 chairperson of the labor relations board shall provide to such organization within seven (7) days
26 the most recent list of individual providers compiled under § 40-8.14-4(f), and three (3)
27 subsequent monthly lists upon request. The chairperson of the labor relations board shall provide
28 lists compiled under § 40-8.14-4(f), upon request, to any exclusive representative of individual
29 providers. To facilitate operation of this chapter, the director of the department of human services
30 shall provide all lists to the chairperson of the labor relations board, upon the request of the
31 chairperson of the labor relations board.

32 **36-11.1-10. Representation and election.**

33 Beginning January 1, 2019, any employee organization that desires to represent the
34 appropriate unit of individual providers may seek exclusive representative status pursuant to an

1 election conducted pursuant to §§ 28-7-14 through 28-7-19. Certification elections for individual
2 providers shall be conducted by mail ballot, and such election shall be conducted upon an
3 appropriate petition stating that among individual providers who have been paid for providing
4 direct support services to participants within the previous twelve (12) months, a number of
5 individual providers equal to at least thirty percent (30%) of those eligible to vote desire to be
6 represented by the petitioner. The individual providers eligible to vote in any such election shall
7 be those individual providers on the monthly list of individual providers compiled under § 40-
8 8.14-4(f), most recently preceding the filing of the election petition. Except as otherwise
9 provided, elections under this section shall be conducted in accordance with §§ 28-7-14 through
10 28-7-19.

11 SECTION 3. Title 40 of the General Laws entitled "HUMAN SERVICES" is hereby
12 amended by adding thereto the following chapter:

13 CHAPTER 8.14

14 QUALITY SELF-DIRECTED SERVICES

15 **40-8.14-1. Definitions.**

16 For purposes of this chapter:

17 (1) "Activities of daily living" means everyday routines generally involving functional
18 mobility and personal care, such as bathing, dressing, eating, toileting, mobility and transfer.

19 (2) "Covered program" means a program to provide direct support services funded in
20 whole or in part by the state of Rhode Island, including the state's Comprehensive § 1115 Waiver
21 Demonstration, integrated care initiative, personal assistance services and supports program,
22 family-directed respite programs for adults and children, Rhode to Home, and any and all waiver
23 programs established pursuant to home and community-based service waivers authorized under §
24 1915(c) (42 U.S.C. § 1396 n) or § 1115 (42 U.S.C. § 1315) of the federal Social Security Act, and
25 Rhode Island general laws, including, but not limited to, chapters 8, 8.1, 8.7, 8.9, and 8.10 of title
26 40, and any plan or program developed pursuant to the executive office of health and human
27 services' authority under §§ 40-8-17 and 40-8.9-9(d); and any similar program that may provide
28 similar services in the future.

29 (3) "Direct support services" means personal care assistance, homemaker, and companion
30 services covered by medical assistance, including:

31 (i) Participant assistance with activities of daily living and instrumental activities of daily
32 living as defined in this chapter;

33 (ii) Assistance with monitoring health status and physical condition;

34 (iii) Assistance with preparation and eating of meals, however not including the cost of

1 meals;

2 (iv) Assistance with housekeeping activities to include, but not be limited to, bed making,
3 dusting vacuuming, laundry, grocery shopping ,and cleaning;

4 (v) Assistance with ambulation; use of special mobility devices and directly providing or
5 arranging transportation; and

6 (vi) Other similar, in-home, non-medical long-term services and supports provided to an
7 elderly person or person with a disability by their caretaker or direct support service provider to
8 meet such participant's daily living needs and ensure that such participant may adequately
9 function in the participant's home and have safe access to the community.

10 (4) "Director" means the director of the department of human services.

11 (5) "Individual provider" means an individual selected by and working under the
12 direction of a participant in a covered program, or a participant's representative, to provide direct
13 support services to the participant, but does not include an employee of a provider agency, subject
14 to the agency's direction and control commensurate with agency employee status or an individual
15 providing services to a participant electing the personal choice option in any program.

16 (6) "Instrumental activities of daily living" means the activities often performed by a
17 person who is living independently in a community setting during the course of a normal day,
18 such as managing money, shopping, telephone use, travel in community, housekeeping, and
19 preparing meals.

20 (7) "Participant" means a person who receives direct support services through a covered
21 program.

22 (8) "Participant's representative" means a participant's legal guardian or an individual
23 having the authority and responsibility to act on behalf of a participant with respect to the
24 provision of direct support services through a covered program.

25 **40-8.14-2. Operations of covered programs.**

26 All covered programs shall operate consistent with this chapter, including by allowing
27 participants and participants' representatives within the programs to elect the option of receiving
28 services through individual providers as defined in § 40-8.14-1, notwithstanding any inconsistent
29 provisions of any Medicaid state plan or program developed pursuant to the executive office of
30 health and human services' authority under §§ 40-8-17 and 40-8.9-9(d); or any other similar
31 statutes or regulations.

32 **40-8.14-3. Optional service providers.**

33 The requirement under § 40-8.14-2 shall not restrict the state's ability to allow
34 participants and participants' representatives within the covered programs to choose not to

1 employ an individual provider, and instead elect the option of receiving direct support services
2 through a personal choice option or through the employees of provider agencies.

3 **40-8.14-4. Duties of the executive office of health and human services.**

4 (a) The director shall allow to all participants within a covered program the option of
5 employing an individual provider to provide direct support services.

6 (b) The director shall ensure that all employment of individual providers is in conformity
7 with this chapter and chapter 11.1 of title 36, to include modification of program operations as
8 necessary to ensure proper classification of individual providers, and to require that all relevant
9 vendors within covered programs assist and cooperate as needed, including managed care
10 organizations and providers of fiscal support, fiscal intermediary, financial management, or
11 similar services to provide support to participants and participants' representatives with regard to
12 employing individual providers, and to otherwise fulfill the requirements of this chapter.

13 (c) The director shall:

14 (1) Establish for all individual providers' compensation rates, payment terms and
15 practices, and any benefit terms; provided that these rates and terms may permit individual
16 provider variations based on traditional and relevant factors otherwise permitted by law;

17 (2) Provide for required orientation programs within three (3) months of hire for
18 individual providers newly hired on or after October 1, 2018, regarding their employment within
19 the covered programs through which they provide services;

20 (3) Have the authority to provide for relevant training and educational opportunities for
21 individual providers, as well as for participants and participants' representatives who receive
22 services from individual providers, including opportunities for individual providers to obtain
23 certification documenting additional training and experience in areas of specialization;

24 (4) Have the authority to provide for the maintenance of a public registry of individuals
25 who have consented to be included to:

26 (i) Provide routine, emergency, and respite referrals of qualified individual providers who
27 have consented to be included in the registry to participants and participants' representatives;

28 (ii) Enable participants and participants' representatives to gain improved access to, and
29 choice among, prospective individual providers, including by having access to information about
30 individual providers' training, educational background, work experience, and availability for hire;

31 (iii) Provide for appropriate employment opportunities for individual providers and a
32 means by which they may more easily remain available to provide services to participants within
33 covered programs;

34 (5) Establish provider qualification standards for the workforce of individual providers,

1 including behavior that would disqualify someone from providing services as an individual
2 provider;

3 (6) Establish other appropriate terms and conditions of employment governing the
4 workforce of individual providers without infringing on participants' or their responsible parties'
5 rights and responsibilities to hire, direct, supervise, and/or terminate the employment of their
6 individual providers; and

7 (7) Establish an advisory board for participants, their representatives and advocates to
8 communicate directly with the director about the provision of quality direct support services in
9 covered programs.

10 (d) The director's authority over terms and conditions of individual providers'
11 employment, including compensation, payment, and benefit terms, employment opportunities
12 within covered programs, individual provider orientation, training, and education opportunities,
13 and the operation of public registries shall be subject to the state's obligations to meet and
14 negotiate under chapters 11 of title 36 and 7 of title 28, as modified and made applicable to
15 individual providers under chapter 11.1 of title 36, and to agreements with any exclusive
16 representative of individual providers, as authorized by chapters 11 of title 36 and 7 of title 28, as
17 modified and made applicable to individual providers under chapter 11.1 of title 36. Except to the
18 extent otherwise provided by law, the director shall not undertake activities in subsections (c)(3)
19 and (c)(4) of this section, prior to October 1, 2018, unless included in a negotiated agreement and
20 an appropriation has been provided by the legislature to the director.

21 (e) The director shall cooperate in the implementation of chapter 11.1 of title 36 with all
22 other relevant state departments and agencies. Any entity providing relevant services within
23 covered programs, including providers of fiscal support, fiscal intermediary, financial
24 management, or similar services to provide support to participants and participants'
25 representatives with regard to employing individual providers shall assist and cooperate with the
26 director of the department of human services in the operations of this section, including with
27 respect to the director's obligations under subsections (b) and (f) of this section.

28 (f) The director shall, no later than October 1, 2018, and then monthly thereafter, compile
29 and maintain a list of the names and addresses of all individual providers who have been paid for
30 providing direct support services to participants within the previous six (6) months. The list shall
31 not include the name of any participant, or indicate that an individual provider is a relative of a
32 participant or has the same address as a participant. The secretary shall share the lists with others
33 as needed for the state to meet its obligations under chapters 11 of title 36 and 7 of title 28 as
34 modified and made applicable to individual providers under chapter 11.1 of title 36, and to

1 facilitate the representational processes under §§ 36-11.1-9 and 36-11.1-10. This shall not include
2 access to private data on participants or participants' representatives. Nothing in this section or
3 chapter 11.1 of tile 36 shall alter the access rights of other private parties to data on individual
4 providers.

5 (g) The director shall immediately commence all necessary steps to ensure that services
6 offered under all covered programs are offered in conformity with this chapter, to gather all
7 information that may be needed for promptly compiling lists required under this chapter,
8 including information from current vendors within covered programs, and to complete any
9 required modifications to currently operating covered programs by October 1, 2018.

10 **40-8.14-5. Severability.**

11 Should any part of this act be declared invalid or unenforceable, or the enforcement or
12 compliance with it is suspended, restrained, or barred, either by the state or by the final judgment
13 of a court of competent jurisdiction, the remainder of this act shall remain in full force and effect.

14 SECTION 4. 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 -- QUALITY SELF-DIRECTED SERVICES -- PUBLIC
OFFICERS AND EMPLOYEES -- INDIVIDUAL PROVIDERS OF DIRECT SUPPORT
SERVICES

1 This act would enable the creation of a public registry of home health aides giving
2 seniors and individuals living with disabilities another choice when accessing long-term care
3 options. The act would also provide that the state would set wage rates and qualification standards
4 for home health aides on the registry. The act would further provide that these home health aides
5 would have the right to choose to form a union through an election.

6 This act would take effect upon passage.

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