

2018 -- S 2734 SUBSTITUTE B AS AMENDED

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LC005278/SUB B
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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. Title 40 of the General Laws entitled "HUMAN SERVICES" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 8.14

4 QUALITY SELF-DIRECTED SERVICES

5 **40-8.14-1. Definitions.**

6 For purposes of this section:

- 7 (1) "Activities of daily living" (ADL) means the routine activities that people tend to do
8 every day without needing assistance. There are six (6) basic ADLs: eating, bathing, dressing,
9 toileting, transferring (walking) and continence.
- 10 (2) "Covered home and community-based services (HCBS)" means any core, preventive,
11 or specialized long-term care services and supports available in a person's home or a community-
12 based living arrangement that the state is authorized to provide under the Medicaid state plan, the
13 Medicaid Section 1115 waiver or any similar program.
- 14 (3) "Direct support services" means the range of home and community-based services
15 (HCBS) covered services that are identified in the Medicaid state plan, Rhode Island's § 1115
16 waiver or any similar program that may provide similar services in the future, and the rules and
17 regulations promulgated by the executive office of health and human services (EOHHS) or a
18 designated agency authorizes individual home care providers to provide. The direct support

1 services must be provided in accordance with applicable federal and state law, rules and
2 regulations and include, but are not limited to, personal care assistance, homemaker, and
3 companion services that the state is authorized to provide under the Medicaid state plan, the
4 Medicaid Section 1115 waiver or any similar program in the future, including:

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

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

8 (iii) Assistance with preparation and eating of meals (not the cost of the meals itself);

9 (iv) Assistance with housekeeping activities (bed making, dusting, vacuuming, laundry,
10 grocery shopping, cleaning);

11 (v) Assistance with transferring, ambulation, and use of special mobility devices assisting
12 the participant by directly providing or arranging transportation; and

13 (vi) Other similar, in-home, non-medical long-term services and supports provided to an
14 elderly person or individual with a disability by an individual provider to meet such person's daily
15 living needs and ensure that such person may adequately function in the person's home and have
16 safe access to the community.

17 (4) "Director" means the director of the Rhode Island department of administration.

18 (5) "Fiscal intermediary" means a third-party organization under contract with the
19 EOHHS responsible for performing payroll and other employment-related functions on behalf of
20 the participant.

21 (i) The fiscal intermediary shall:

22 (A) Be authorized by the secretary or a designated agency to receive and distribute
23 support funds on behalf of a participant in accordance with the participant's service plan; and

24 (B) Act as a fiscal intermediary on behalf of a participant in compliance with all rules,
25 regulations, and terms and conditions established by the secretary.

26 (ii) The fiscal intermediary shall not make any decisions regarding hiring, supervising, or
27 firing individual providers.

28 (6) "Individual provider" means an individual selected by and working under the
29 direction of a Medicaid LTSS beneficiary or the beneficiary's duly authorized representative to
30 provide direct support services to the participant in accordance with the beneficiary's service plan,
31 but does not include an employee of a provider agency, subject to the agency's direction and
32 control commensurate with agency employee status or an individual providing services to a
33 participant electing the personal choice option in any program.

34 (7) "Instrumental activities of daily living" means the skills a person needs to live safely

1 and successfully in a residential setting of choice without outside supports. Such skills include,
2 but are not limited to, using the telephone, traveling, shopping, preparing meals, doing
3 housework, taking medications properly, and managing money.

4 (8) "Medicaid LTSS beneficiary" means a person who has been determined by the state
5 to obtain Medicaid-funded long-term services and supports.

6 (9) "Participant" means a Medicaid LTSS beneficiary who receives direct support
7 services from an individual provider.

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

11 (11) "Provider representative" means a provider organization that is certified as the
12 exclusive negotiating representative of individual providers as provided in § 40-8.15-7.

13 (12) "Secretary" means the secretary of the Rhode Island executive office of health and
14 human services (EOHHS).

15 **40-8.14-2. Scope of coverage.**

16 Individual providers may provide all authorized HCBS covered services in accordance
17 with the participant's service plan at home and other Medicaid certified settings, to the extent the
18 applicable federal and state laws and rules and regulations allow.

19 **40-8.14-3. Use of employee workforce.**

20 The requirement under § 40-8.14-2 shall not restrict the state's ability to afford
21 participants and participants' representatives who choose not to employ an individual provider, or
22 are unable to do so, the option of receiving direct support services through a personal choice
23 option or through the employees of provider agencies, rather than through an individual provider.

24 Nothing in this chapter shall restrict the state's ability to afford Medicaid LTSS
25 beneficiaries authorized to receive HCBS covered services with the freedom of choice guaranteed
26 under Title XIX to enter into service delivery agreements with any authorized Medicaid provider.

27 **40-8.14-4. Duties of the executive office for health and human services.**

28 (a) The secretary shall afford to all Medicaid LTSS beneficiaries who receive authorized
29 HCBS covered services in accordance with a service plan the option of employing an individual
30 provider to provide direct support services.

31 (b) The secretary shall modify program operations as necessary to ensure implementation
32 of the individual provider model and to ensure all relevant vendors assist and cooperate as
33 needed, including managed care organizations and providers of fiscal support, fiscal intermediary,
34 financial management, or similar services to provide support to participants and participants'

1 representatives with regard to employing individual providers, and otherwise fulfill the
2 requirements of this section, including the provisions of subsection (f) of this section.

3 (c) The secretary shall have the authority to:

4 (1) Establish reimbursement rates for all individual providers, in accordance with chapter
5 8.15 of title 40, provided that these rates may permit individual provider variations based on
6 traditional and relevant factors otherwise permitted by law; provided, however, that
7 reimbursement rates shall be required to be approved by the general assembly.

8 (2) Ensure delivery of required orientation programs for individual providers;

9 (3) Implement training and educational opportunities negotiated in accordance with
10 chapter 8.15 of title 40 for individual providers, as well as for participants and participants'
11 representatives who receive services from individual providers, including opportunities for
12 individual providers to obtain certification documenting additional training and experience in
13 areas of specialization;

14 (4) In collaboration with the provider representative, provide for the maintenance of a
15 public registry of individuals who have consented to be included to:

16 (i) Allow for routine, emergency, and respite referrals of qualified individual providers
17 who have consented to be included in the registry to participants and participants' representatives;

18 (ii) Enable participants and participants' representatives to gain improved access to, and
19 choice among, prospective individual providers, including by having access to information about
20 individual providers' training, educational background, work experience, national criminal
21 background check results, and availability for hire;

22 (5) Establish provider qualification standards for individual providers, including
23 undergoing a national criminal background check and behavior that would disqualify someone as
24 an individual provider;

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

28 (7) Establish an advisory board for participants, their representatives, and advocates, to
29 communicate directly with the secretary about the provision of quality direct support services.

30 (i) The board shall consist of thirteen (13) members:

31 (A) One of whom shall be the secretary of the executive office of health and human
32 services, or a designee, who shall serve as chair;

33 (B) Six (6) of whom shall be consumers of the individual provider model, two (2) to be
34 appointed by the governor, two (2) to be appointed by the president of the senate, and two (2) to

1 be appointed by the speaker of the house;

2 (C) Three (3) of whom shall be representatives from statewide independent living
3 centers, one to be appointed by the governor, one to be appointed by the president of the senate,
4 and one to be appointed by the speaker of the house;

5 (D) Three of whom shall be from a 501(c)(3) statewide senior advocacy organization, one
6 to be appointed by the governor, one to be appointed by the president of the senate, and one to be
7 appointed by the speaker of the house;

8 (i) The board members shall be appointed for three (3) year terms.

9 (iii) The board shall advise the secretary, or a designee, regarding issues relating to the
10 quality, access, and consumer autonomy offered through the individual provider model; and

11 (8) Contract with a fiscal intermediary service for the operations of the individual
12 provider model.

13 (d) The secretary's authority in § 40-8.14-4 shall be subject to the state's obligations to
14 meet and negotiate under § 40-8.15-3 and chapter 7 of title 28, as modified and made applicable
15 to individual providers under §40-8.15-3, and to agreements with any exclusive representative of
16 individual providers, as authorized by § 40-8.15-3. Except to the extent otherwise provided by
17 law, the secretary shall not undertake activities in subsections (c)(3) and (c)(4) of this section,
18 prior to October 1, 2019, unless included in a negotiated agreement and an appropriation has been
19 provided by the legislature to the secretary.

20 (e) The secretary shall cooperate in the implementation of chapter 8.15 of title 40 with all
21 other relevant state departments and agencies. Any entity providing relevant services, including,
22 but not limited to, providers of fiscal support, fiscal intermediary, financial management, or
23 similar services to provide support to participants and participants' representatives with regard to
24 employing individual providers shall assist and cooperate with the secretary in the operations of
25 this section, including with respect to the secretary's obligations under subsections (b) and (f) of
26 this section.

27 (f) The secretary, or a designee, shall, no later than October 1, 2019, and then quarterly
28 thereafter, in accordance with rules and regulations promulgated by EOHHS, compile and
29 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, or a designee agency, shall
33 share the lists with others as needed for the state to meet its obligations under this chapter and
34 chapter 8.15 of title 40. This sharing shall not include access to private data on participants or

1 participants' representatives. Nothing in this section or chapter 8.15 of title 40 shall alter the
2 access rights of other private parties to data on individual providers.

3 (g) The secretary shall immediately commence all necessary steps to ensure that direct
4 support services are offered in conformity with this section, to gather all information that may be
5 needed for promptly compiling lists required under this section, including information from
6 current vendors, and to complete any required modifications to currently providing direct support
7 services by October 1, 2019.

8 **40-8.14-5. authority of the department of administration.**

9 In accordance with chapter 8.15 of title 40, the director shall have the authority to:

10 (1) Meet and negotiate with any provider representative chosen pursuant to § 40-8.15-8
11 2(a);

12 (2) In coordination with the secretary, negotiate over any of the topics in § 40-8.14-4(c)
13 and any other appropriate matters governing the workforce of individual providers without
14 infringing on participants' or their responsible parties' rights and responsibilities to hire, direct,
15 supervise, and/or terminate the employment of their individual providers; and

16 (3) Execute a collective bargaining agreement, subject to any approval required under §
17 40-8.15-5.

18 **40-8.14-6. Severability.**

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

23 SECTION 2. Title 40 of the General Laws entitled "HUMAN SERVICES" is hereby
24 amended by adding thereto the following chapter:

25 CHAPTER 8.15

26 INDIVIDUAL PROVIDERS OF DIRECT SUPPORT SERVICES

27 **40-8.15-1. Definitions.**

28 For the purposes of this chapter:

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

30 (2) "Director" has the meaning given to it under § 40-8.14-1.

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

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

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

34 (6) "Provider representative" has the meaning given to it under § 40-8.14-1.

1 (7) "Secretary" has the meaning given to it under § 40-8.14-1.

2 **40-8.15-2. right of individual providers to choose provider representative -- Subject**
3 **of negotiation.**

4 (a) Individual providers may, in accordance with the procedures set forth in § 40-8.15-7,
5 choose a provider organization to be their provider representative and to negotiate with the state,
6 over the terms and conditions of individual providers' participation in providing direct support
7 services, including, but not limited to:

8 (1) Expanding training and professional development opportunities;

9 (2) Improving the recruitment and retention of qualified individual providers;

10 (3) Reimbursement rates and other economic matters;

11 (4) Benefits;

12 (5) Payment procedures; and

13 (6) A grievance resolution process.

14 (b) Nothing in this chapter or in chapter 8.14 of title 40 shall interfere with regulatory
15 authority of the Rhode Island department of health (RIDOH) over individual providers licensing.
16 Individual provider licensing shall be excluded from and not subject to the negotiation process
17 recognized and described in this section.

18 (c) Notwithstanding the above, individual providers must operate in conformance with
19 the relevant sections of the general laws applicable thereto and regulations promulgated by the
20 state.

21 (d) The directors of each department with authority to administer their respective
22 programs shall work in consultation with the secretary regarding the terms and conditions of
23 individual providers' participation in their respective programs including, but not limited to, the
24 terms and conditions in subsection (a) of this section.

25 **40-8.15-3. Good faith negotiations.**

26 It shall be the obligation of the director, or a designee, to meet and negotiate in good faith
27 with the provider representative within thirty (30) days after receipt of written notice from the
28 provider representative of the request for a meeting for bargaining purposes. This obligation shall
29 include the duty to cause any agreement resulting from the negotiations to be reduced to a written
30 contract.

31 **40-8.15-4. Unresolved issues -- Impasse procedures.**

32 In the event that the provider representative and the director, or a designee, are unable to
33 reach an agreement on a contract, or reach an impasse in negotiations, the procedures of §§ 36-
34 11-7.1 through 36-11-11 shall be followed.

1 **40-8.15-5. Economic aspects of contract subject to legislative appropriation.**

2 Any aspects of a contract requiring appropriation by the federal government, the general
3 assembly, or revisions to statutes and/or regulations shall be subject to passage of those
4 appropriations and/or any necessary statutory and/or regulatory revisions.

5 **40-8.15-6. Duty to represent all individual providers fairly -- Deduction of**
6 **membership dues and other voluntary deductions.**

7 (a) A provider organization certified as the provider representative shall represent all
8 individual providers in the state fairly and without discrimination, without regard to whether or
9 not the individual provider is a member of the provider organization.

10 (b) Each individual provider may choose whether to be a member of the provider
11 organization. The state, or its designee, shall deduct from payments to care providers membership
12 dues for individual providers who elect to become members and authorize the deduction of
13 membership dues, and any other voluntary deductions authorized by individual providers.

14 **40-8.15-7. Certification and decertification of provider organization.**

15 Petitions to certify a provider organization to serve as the provider representative of
16 individual providers, petitions to intervene in such an election, and any other petitions for
17 investigation of controversies as to representation may be filed with and acted upon by the labor
18 relations board in accordance with the provisions of chapter 7 of title 28 and the board's rules and
19 regulations; provided, that any valid petition as to whether individual providers wish to certify or
20 decertify a provider representative shall be resolved by a secret ballot election among individual
21 providers, for which the purpose the board may designate a neutral third party to conduct said
22 secret ballot election.

23 (b) The only appropriate unit shall consist of all individual providers in the state.

24 (c) For purposes of this section, no individual provider shall be deemed excluded from
25 the bargaining unit under § 28-7-3(3)(ii) because they provide care to a family member or
26 because they are in domestic service in a person's home.

27 (d) The cost of any certification election held under this section will be split equally
28 among all the provider organizations that appear on the ballot.

29 **40-8.15-8. Unfair practices.**

30 It shall be unlawful for the state to do any of the acts made unlawful under § 28-7-13. It
31 shall be unlawful for the provider representative to do any of the acts made unlawful under § 28-
32 7-13.1. Any alleged violation of this provision may be filed with the labor relations board as an
33 unfair labor practice and considered and ruled upon in accordance with chapter 7 of title 28 and
34 the board's rules and regulations.

1 **40-8.15-9. Individual providers not state employees.**

2 Notwithstanding the state's obligations to meet and negotiate under chapter 7 of title 28,
3 nothing in this chapter shall be construed to make individual providers employees of the state for
4 any purpose, including for the purposes of eligibility for the state employee pension program or
5 state employee health benefits.

6 **40-8.15-10. Right of families to select, direct and terminate individual providers**

7 Nothing in this chapter shall be construed to alter the rights of families to select, direct,
8 and terminate the services of individual providers.

9 **40-8.15-11. Strikes not authorized.**

10 Individual providers shall not engage in any strike or other collective cessation of the
11 delivery of direct-support services.

12 **40-8.15-12. State action exemption.**

13 The state action exemption to the application of state and federal antitrust laws is
14 applicable to the activities of individual providers and their provider representative authorized
15 under this chapter.

16 **40-8.15-13. Severability.**

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

21 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 -- QUALITY SELF-DIRECTED SERVICES -- PUBLIC
OFFICERS AND EMPLOYEES -- INDIVIDUAL PROVIDERS OF DIRECT SUPPORT
SERVICES

1 This act would:

2 (1) Enable the creation of a public registry of home health aides giving seniors and
3 individuals living with disabilities another choice when accessing long-term care options;

4 (2) Provide that the state would set wage rates and qualification standards for home
5 health aides on the registry; and

6 (3) Provide that these home health aides would have the right to choose to form a union
7 through an election.

8 This act would take effect upon passage.

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