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LC001705

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS - DIVISION OF DEVELOPMENTAL DISABILITIES

Introduced By: Representatives Casey, Amore, Fogarty, and Knight

Date Introduced: February 27, 2019

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 40.1-21-4.3 of the General Laws in Chapter 40.1-21 entitled
2 "Division of Developmental Disabilities" is hereby amended to read as follows:

3 **40.1-21-4.3. Definitions.**

4 As used in this chapter and in chapter 22 of this title the words:

5 (1) "Ancillary services" means those services provided, and shall include, but not be
6 limited to, transportation, housing, housing adaptation, personal attendant care, and homemaker
7 services.

8 (2) "Case management" means the implementation of an individual's program by
9 providing information, by referral to appropriate service providers, by procurement of services,
10 and by the coordination of the necessary services.

11 (3) "Department" means the Rhode Island department of behavioral healthcare,
12 developmental disabilities and hospitals ([BHDDH](#)).

13 (4) "Developmental services" means those services provided to developmentally disabled
14 adults, and shall include, but not be limited to, habilitation and rehabilitation services, and day
15 services.

16 (5) "Developmentally disabled adult" means a person, eighteen (18) years old or older
17 and not under the jurisdiction of the department of children, youth and families who is either a
18 mentally retarded developmentally disabled adult or is a person with a severe, chronic disability

1 which:

2 (i) Is attributable to a mental or physical impairment or combination of mental and
3 physical impairments;

4 (ii) Is manifested before the person attains age twenty-two (22);

5 (iii) Is likely to continue indefinitely;

6 (iv) Results in substantial functional limitations in three (3) or more of the following
7 areas of major life activity:

8 (A) Self care,

9 (B) Receptive and expressive language,

10 (C) Learning,

11 (D) Mobility,

12 (E) Self-direction,

13 (F) Capacity for independent living,

14 (G) Economic self-sufficiency; and

15 (v) Reflects the person's need for a combination and sequence of special,
16 interdisciplinary, or generic care, treatment, or other services, which are of lifelong or extended
17 duration and are individually planned and coordinated. For purposes of funding, it is understood
18 that students enrolled in school will continue to receive education from their local education
19 authority in accordance with § 16-24-1 et seq.

20 (6) "Diagnosis and evaluation" means a process to determine whether and to what extent
21 an individual is developmentally disabled and a study of the individual's condition, situation, and
22 needs which lead to a recommendation of what services, if any, would benefit the individual.

23 (7) "Individualized program plan" or "general service plan" means a plan, however
24 named, which includes, but shall not be limited to, the following:

25 (i) An evaluation of the strengths, difficulties, needs, and goals of the individual;

26 (ii) A description of those services found to be necessary or appropriate to assist the
27 individual in realizing his or her potential for self-sufficiency in major life activities;

28 (iii) A description of the agencies and/or individuals, which are proposed to provide each
29 of the recommended services;

30 (iv) The intermediate and long-range objectives for the individual's development and
31 habilitation;

32 (v) The expected duration for the provision of the services;

33 (vi) A description of the tests and other evaluative devices used and their results;

34 (vii) Proposed criteria for monitoring and evaluating the success of the services in

1 meeting the individual's needs; and

2 (viii) The signatures of the preparers of the plan and the date.

3 The individual program plan shall indicate developmental, supportive, or ancillary
4 services by function and frequency, the manner of subsidy and delivery and the categories of need
5 for services such as transportation, job training, or occupation, housing, housing adaptation,
6 personal attendant care, homemaker, or other services. ~~This plan shall be reviewed at least
7 annually; provided, however, that authorizations for services and funding issued prior to July 1,
8 2011 are null and void. Authorizations will be paid at the rate effective in the quarter the service
9 was provided.~~ In keeping with the tenets of centers for Medicare and Medicaid services (CMS)
10 and the home and community-based services (HCBS) final rule requiring person-centered
11 planning, individuals shall be able to utilize their allocated funding in a flexible manner
12 consistent with their stated goals and plan of care. To this end, authorizations for services and
13 related funding issued on or after July 1, 2019, shall be developed and issued on an annual basis
14 for each participant. Authorizations for services shall be effective when the authorization is issued
15 and on an annual basis, provided that the individual's assessed needs do not change.
16 Notwithstanding the issuance of annual funding authorizations, BHDDH is not restricted from
17 other statutory rights granted the department. Any changes to rates during a fiscal year require a
18 forty-five (45) day notice.

19 (8) "Mentally retarded developmentally disabled adult" means a person eighteen (18)
20 years old or older and not under the jurisdiction of the department of children, youth and
21 families, with significant sub-average, general intellectual functioning two (2) standard deviations
22 below the norm, existing concurrently with deficits in adaptive behavior and manifested during
23 the developmental period. For purposes of funding, it is understood that students enrolled in
24 school will continue to receive education from their local education authority in accordance with
25 § 16-24-1 et seq.

26 (9) "Service broker" means that individual who assists in facilitating the connection
27 between the developmentally disabled person and the services required by the individual program
28 plan.

29 (10) "Subsidized access to service" means the provisions of financial resources through
30 vouchers to a developmentally disabled person to enable the person to gain access to appropriate
31 generic and/or special services as required by the individual program plan.

32 (11) "Supportive services" means those services provided to developmentally disabled
33 adults, and shall include, but not be limited to, occupational therapy, physical therapy,
34 psychological services, counseling, nursing services, and medical services.

1 SECTION 2. Section 40.1-26-2 of the General Laws in Chapter 40.1-26 entitled "Rights
2 for Persons with Developmental Disabilities" is hereby amended to read as follows:

3 **40.1-26-2. Definitions.**

4 As used in this chapter:

5 (1) "Advocate" means: (i) a legal guardian; or (ii) an individual acting on behalf of a
6 person with a developmental disability in a manner clearly consistent with the interests of the
7 person with a developmental disability and includes a family member, friend, or professional
8 advocate. Whenever possible an advocate should be selected by the person with a disability.

9 (2) "Agency" means any person or organization which provides day program services,
10 residential services, support services or advocacy services for persons with developmental
11 disabilities, and which is licensed by the department of behavioral healthcare, developmental
12 disabilities and hospitals pursuant to § 40.1-24-1 et seq.

13 (3) "Applicant" means any person with a developmental disability who has applied for
14 services from the division of developmental disabilities and/or any agency licensed by the
15 department of behavioral healthcare, developmental disabilities and hospitals pursuant to § 40.1-
16 24-1 et seq.

17 (4) "Aversive interventions" means a class of stimuli that are followed by escape or
18 avoidance response.

19 (5) "Behavioral treatment intervention" means any intervention or treatment to develop or
20 strengthen adaptive appropriate behaviors through the application of behavioral interventions and
21 to simultaneously reduce the frequency of maladaptive or inappropriate behaviors. Behavior
22 interventions encompass interventions, which refer to purposeful, clinical manipulation of
23 behavior.

24 (6) "Competent" means the ability to understand the likely risks and benefits of a
25 procedure or plan when the risks and benefits are presented to the participant in a manner most
26 likely to be understood by the participant in light of his or her cognitive abilities and learning
27 style.

28 (7) "Department" means the department of behavioral healthcare, developmental
29 disabilities and hospitals ([BHDDH](#)).

30 (8) "Developmental disability" means a severe chronic disability which is attributable to a
31 mental or physical impairment or combination of impairments; is manifested before the person
32 attains age twenty-two (22); is likely to continue indefinitely; results in substantial functional
33 limitations in three (3) or more of the following areas of major life activity: self-care, receptive
34 and expressive language, learning, mobility, self-direction, capacity for independent living,

1 economic self-sufficiency; and reflects the person's need for a combination and sequence of
2 special, interdisciplinary or generic care, treatment, or other services which are of life long or
3 extended duration and are individually planned and coordinated.

4 (9) "Individualized plan" means the personalized document which describes an
5 individualized profile of the participant highlighting his or her capabilities, preferences and
6 interests. The plan describes specific supports in the areas of vocational, social, medical,
7 supported living, and rehabilitation required to meet the specific needs of the participant. The
8 plan includes quality indicators that demonstrate the plan has met the expectations of the
9 participant and the participant is satisfied with the support services he or she is receiving;
10 ~~provided, however, that authorizations for services and funding issued prior to July 1, 2011 are~~
11 ~~null and void. Authorizations for services will be paid at the rate effective when in the quarter the~~
12 ~~service was provided.~~ In keeping with the tenets of centers for Medicare and Medicaid services
13 (CMS) and the home and community-based services (HCBS) final rule requiring person-centered
14 planning, individuals shall be able to utilize their allocated funding in a flexible manner
15 consistent with their stated goals and plan of care. To this end, authorizations for services and
16 related funding issued on or after July 1, 2019, shall be developed and issued on an annual basis
17 for each participant. Authorizations for services shall be effective when the authorization is issued
18 and on an annual basis, provided that the individual's assessed needs do not change.
19 Notwithstanding the issuance of annual funding authorizations, BHDDH is not restricted from
20 other statutory rights granted the department. Any changes to rates during a fiscal year require a
21 forty-five (45) day notice.

22 (10) "Participant" means any person eighteen (18) years or older, with a developmental
23 disability who receives services from the division of developmental disabilities and/or an agency
24 licensed by the department of behavioral healthcare, developmental disabilities and hospitals.

25 (11) "Relative" means a member of the participant's or applicant's family who has been
26 actively involved in the participant's or applicant's life, has an ongoing relationship with the
27 participant or applicant, and is supportive in a manner clearly consistent with the best interests of
28 the participant or applicant.

29 (12) "Seclusion" means placing a participant alone in a locked room without supervision.

30 (13) "Serious incidents" means any situation involving a person with developmental
31 disabilities in which the person:

32 (i) Has sustained an injury, which requires medical care or treatment beyond routine first
33 aid;

34 (ii) Has been missing;

- 1 (iii) Has died;
- 2 (iv) Has been involved in a criminal act;
- 3 (v) Has been subject to a medication error.
- 4 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 BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS - DIVISION OF DEVELOPMENTAL DISABILITIES

- 1 This act would provide for authorizations for services to developmentally disabled adults
- 2 issued on or after July 1, 2019, be developed on an annual basis with funding for these services to
- 3 be issued on an annual basis.
- 4 This act would take effect upon passage.

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