

2023 -- H 5238

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

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A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS -- COOPERATION WITH FEDERAL GOVERNMENT

Introduced By: Representatives Fellela, Carson, Donovan, Kazarian, Cortvriend,
Sanchez, Nardone, and Noret

Date Introduced: January 25, 2023

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 40.1-1.1 of the General Laws entitled "Cooperation with Federal
2 Government" is hereby amended by adding thereto the following section:

3 **40.1-1.1-5. Home and community based services to permit payments for family**
4 **caregivers and legally responsible individuals.**

5 (a) Commencing July 1, 2023, and continuing thereafter, family caregivers and legally
6 responsible individuals, including guardians appointed for an adult by a court of competent
7 jurisdiction, and for children with special needs, shall be eligible to provide home and community
8 based services ("HCBS"), including personal care services, to developmentally disabled adults and
9 children with special needs, and be eligible to be paid for such services pursuant to the HCBS final
10 rules. As used in this section, the term "family caregivers" shall include a member of the individual's
11 family and a legally responsible relative. Provided, the caregiver shall be required to meet the
12 provisions of subsection (b) of this section.

13 (b) The executive office of health and human services ("EOHHS") shall permit payment
14 for family caregivers and legally responsible individuals to provide HCBS, including personal care
15 services and all home-based services for children with special needs, and developmentally disabled
16 adults. To ensure that individuals receive necessary services as authorized in the plan of care, family
17 caregivers/legally responsible individuals will be required to document case notes reflecting the
18 services they provide, as well as an attestation that they have reviewed the plan of care and will

1 provide the supports in the plan to the extent possible given the public health emergency and will
2 identify safe alternatives where necessary and possible. To ensure that payments are made for
3 services rendered, EOHHS will utilize the self-directed plan process. Under this process,
4 individuals who self-direct their services shall go through a fiscal intermediary agency, which
5 reviews employment paperwork and time sheets submitted by the parent/guardian.

6 (c) The EOHHS is directed to ensure that federal financial participation is used to the
7 maximum extent allowable to provide coverage pursuant to this section, and that state-only funds
8 will be used only if federal financial participation is not available. To the extent the EOHHS
9 determines it necessary to implement the provisions of this section, the EOHHS is authorized to
10 pursue a Medicaid section 1115 demonstration waiver request and renewal to seek a waiver of the
11 compliance provisions of 42 U.S.C. section 1396d(a) ("definitions").

12 SECTION 2. Rhode Island Medicaid Reform Act of 2008 Joint Resolution.

13 WHEREAS, The General Assembly enacted Chapter 12.4 of Title 42 entitled "The Rhode
14 Island Medicaid Reform Act of 2008"; and

15 WHEREAS, A legislative enactment is required pursuant to Rhode Island General Laws §
16 42-12.4-1, et seq.; and

17 WHEREAS, Rhode Island General Laws § 42-7.2-5(3)(i) provides that the secretary of the
18 executive office of health and human services ("executive office") is responsible for the review and
19 coordination of any Medicaid section 1115 demonstration waiver requests and renewals as well as
20 any initiatives and proposals requiring amendments to the Medicaid state plan or category II or III
21 changes as described in the demonstration, "with potential to affect the scope, amount, or duration
22 of publicly-funded health care services, provider payments or reimbursements, or access to or the
23 availability of benefits and services provided by Rhode Island general and public laws"; and

24 WHEREAS, In pursuit of a more cost-effective consumer choice system of care that is
25 fiscally sound and sustainable, the secretary requests legislative approval of the following proposals
26 to amend the demonstration; and

27 WHEREAS, Implementation of adjustments may require amendments to the Rhode
28 Island's Medicaid state plan and/or section 1115 waiver under the terms and conditions of the
29 demonstration. Further, adoption of new or amended rules, regulations and procedures may also be
30 required:

31 (a) Section 1115 demonstration waiver – extension request. The executive office proposes
32 to seek approval from the federal centers for Medicare and Medicaid services ("CMS") to extend
33 the Medicaid section 1115 demonstration waiver as authorized in Rhode Island General Laws
34 chapter 12.4 of title 42. In the Medicaid section 1115 demonstration waiver extension request due

1 to CMS by December 31, 2023, in addition to maintaining existing Medicaid section 1115
2 demonstration waiver authorities, the executive office proposes to seek a Medicaid section 1115
3 demonstration waiver request and renewal to a seek waiver of the compliance provisions of 42
4 U.S.C. section 1396d(a) ("definitions"), as set forth in subsection (b) of this resolution.

5 (b) Home and community based services ("HBCS"). The executive office proposes to
6 permit payment for family caregivers and legally responsible individuals, to provide HCBS,
7 including personal care services and all home-based services for children with special needs, and
8 developmentally disabled adults. To ensure that individuals receive necessary services as
9 authorized in the plan of care, family caregivers/legally responsible individuals will be required to
10 document case notes reflecting the services they provide, as well as an attestation that they have
11 reviewed the plan of care and will provide the supports in the plan to the extent possible given the
12 public health emergency and will identify safe alternatives where necessary and possible. To ensure
13 that payments are made for services rendered, EOHHS will utilize the self-directed plan process.
14 Under this process, individuals who self-direct their services go through a fiscal intermediary
15 agency, which reviews employment paperwork and time sheets submitted by the parent/guardian.
16 As used in this section, the term "family caregivers" may include a member of the individual's
17 family and a legally responsible relative; now, therefore be it

18 RESOLVED, That the general assembly hereby approves the proposals stated above in the
19 recitals; and be it further;

20 RESOLVED, That the secretary of the executive office of health and human services is
21 authorized to pursue and implement any waiver amendments, state plan amendments, and/or
22 changes to the applicable department's rules, regulations and procedures approved herein and as
23 authorized by chapter 12.4 of title 42; and be it further;

24 RESOLVED, That this joint resolution shall take effect upon passage.

25 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
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1 This act would codify in state law portions of an Attachment K Emergency and
2 Preparedness Response which included actions that state could take under existing section 1915(c)
3 of the Social Security Act relating to home and community-based waiver authority in order to
4 respond to the COVID-19 pandemic. More specifically, the act authorizes members of an
5 individual's family as well as a legally responsible adult to receive payment for delivering home
6 and community based services to a developmentally disabled adult and a child with special needs.
7 This act would also include a Medicaid Section 1115 Demonstration Waiver to permit this payment
8 to be made, notwithstanding the provisions of 42 U.S.C. section 1396d(a).

9 This act would take effect upon passage.

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