

2023 -- H 5991

LC001993

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO HUMAN SERVICES -- QUALITY SELF-DIRECTED SERVICES

Introduced By: Representatives Slater, Diaz, Cruz, Potter, and Voas

Date Introduced: March 01, 2023

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. This Act shall be known and may be cited as the Personal Choice in Direct-
2 Support Services Act of 2023.

3 (1) The State of Rhode Island is committed to rebalancing the provision of long-term care
4 away from institutional care and towards a home- and community-based care model by enhancing
5 ~~consumer choice~~ consumer choice.

6 (2) This chapter operates to merge the Independent Provider program into the Personal
7 Choice Program so that the State shall have one self-directed program known as the Personal
8 Choice Program.

9 (3) The merger of these programs will further the State's rebalancing goal by streamlining
10 the delivery of support services, increasing administrative efficiency, making it easier for
11 consumers to direct the care that they need, and extending collective bargaining rights to Individual
12 Providers, which will improve provider recruitment and retention and otherwise strengthen the
13 program.

14 (4) This act does not alter or limit the secretary's authority to administer the Personal
15 Choice Program including to adopt rules and operate the program, to determine participant budgets,
16 to determine eligibility, or to authorize services, except as specifically set forth in this chapter.

17 (5) This act does not alter or limit the rights of participants and their representative to select,
18 direct, and terminate the services of individual providers or to determine individual providers'
19 wages within a range set by the secretary.

1 (6) This act does not alter or impede the administration or delivery of self-directed
2 programs for individuals with intellectual disabilities, consistent with 210-ricr-50-10-2(b) as it
3 exists as of the effective date of this act.

4 SECTION 2. Sections 40-8.14-1 and 40-8.14-3 of the General Laws in Chapter 40-8.14
5 entitled "Quality Self-Directed Services" are hereby amended to read as follows:

6 **40-8.14-1. Definitions.**

7 For purposes of this section:

8 (1) "Activities of daily living" (ADL) means the routine activities that people tend to do
9 every day without needing assistance. There are six (6) basic ADLs: eating, bathing, dressing,
10 toileting, transferring (walking), and continence.

11 (2) "Covered home- and community-based services (HCBS)" means any core, preventive,
12 or specialized long-term-care services and supports available in a person's home or a community-
13 based living arrangement that the state is authorized to provide under the Medicaid state plan, the
14 Medicaid section 1115 waiver, or any similar program.

15 (3) "Direct-support services" means the range of home- and community-based services
16 (HCBS) covered services that are identified in the Medicaid state plan, Rhode Island's section 1115
17 waiver, or any similar program that may provide similar services in the future, and the rules and
18 regulations promulgated by the executive office of health and human services (EOHHS) or a
19 designated agency authorize individual home-care providers to provide. The direct-support services
20 must be provided in accordance with applicable federal and state law, rules, and regulations and
21 include, but are not limited to, personal care assistance, homemaker, and companion services that
22 the state is authorized to provide under the Medicaid state plan, the Medicaid section 1115 waiver,
23 or any similar program in the future, including:

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

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

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

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

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

32 (vi) Other similar, in-home, non-medical long-term services and supports provided to an
33 elderly person or individual with a disability by an individual provider to meet the person's daily
34 living needs and ensure that the person may adequately function in the person's home and have

1 safe access to the community.

2 (4) “Director” means the director of the Rhode Island department of administration.

3 (5) “Fiscal intermediary” means a third-party organization under contract with the EOHHS
4 responsible for performing payroll and other employment-related functions on behalf of the
5 participant.

6 (i) The fiscal intermediary shall:

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

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

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

13 (6) “Individual provider” means an individual selected by and working under the direction
14 of a Medicaid LTSS beneficiary or the beneficiary’s duly authorized representative to provide
15 direct-support services to the participant in accordance with the beneficiary’s service plan, but does
16 not include an employee of a provider agency, subject to the agency’s direction and control
17 commensurate with agency employee status ~~or an individual providing services to a participant~~
18 ~~electing the personal choice option in any program.~~

19 (7) “Instrumental activities of daily living” means the skills a person needs to live safely
20 and successfully in a residential setting of choice without outside supports. These skills include,
21 but are not limited to, using the telephone, traveling, shopping, preparing meals, doing housework,
22 taking medications properly, and managing money.

23 (8) “Medicaid LTSS beneficiary” means a person who has been determined by the state to
24 obtain Medicaid-funded long-term services and supports.

25 (9) “Participant” means a Medicaid LTSS beneficiary who receives direct-support services
26 from an individual provider.

27 (10) “Participant’s representative” means a participant’s legal guardian or an individual
28 having the authority and responsibility to act on behalf of a participant with respect to the provision
29 of direct-support services.

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

32 (12) “Secretary” means the secretary of the Rhode Island executive office of health and
33 human services (EOHHS).

34 **40-8.14-3. Use of employee workforce.**

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

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

8 SECTION 3. Section 40-8.15-9 of the General Laws in Chapter 40-8.15 entitled
9 "Individual Providers of Direct-Support Services" is hereby amended to read as follows:

10 **40-8.15-9. Individual providers not state employees Employee status of individual**
11 **providers.**

12 (a) The state is the employer of individual providers for the purposes of collective
13 bargaining over wage ranges and other terms and conditions of employment, as required by this
14 chapter.

15 ~~(b) Notwithstanding the state's obligations to meet and negotiate under chapter 7 of title~~
16 ~~28, nothing~~ Nothing in this chapter shall be construed to make individual providers employees of
17 the state for any other purpose, including for the purposes of eligibility for the state employee
18 pension program or state employee health benefits.

19 (c) Neither the secretary, the director, nor any other person acting on behalf of the state
20 shall exercise any authority or take any action that undermines the state's status as the employer of
21 individual providers for the purposes specified in subsection (a) of this section.

22 SECTION 4. Chapter 40-8.15 of the General Laws entitled "Individual Providers of Direct-
23 Support Services" is hereby amended by adding thereto the following sections:

24 **40-8.15-14. Wage ranges.**

25 (a) The secretary shall set wage ranges for all individual providers. All direct-support
26 services performed by individual providers must be compensated at a wage that is within the range
27 set by the secretary for the services provided, but the participant may choose what wage to pay
28 within the applicable range.

29 (b) The wage range may be the subject of collective bargaining as provided in this chapter.

30 (c) The secretary may permit participants to set aside a portion of the funds provided by
31 the secretary to purchase services, equipment and supplies, in accordance with the secretary's
32 eligibility criteria. These funds shall not be used for any direct-support services as defined by § 40-
33 8.14-1.

34 (d) The provisions of this section shall take effect on the date of implementation, as

1 provided in § 40-8.15-16(c).

2 **40-8.15-15. Other duties of the executive office for health and human services.**

3 (a) The secretary shall require every individual provider to complete a mandatory
4 orientation, pursuant to the secretary's authority under § 40-8.14-4(c)(2).

5 (1) An individual provider who is providing services as of the date of implementation as
6 defined in § 40-8.15-16(c) must complete the mandatory orientation within one year of the date of
7 implementation.

8 (2)(i) An individual provider who is not providing services as of the date of implementation
9 as defined in § 40-8.15-16(c) must complete the mandatory orientation before beginning to perform
10 services as individual providers, except as provided in subsection (a)(2)(ii) of this section.

11 (ii) An individual provider who is not already performing services as of the date of
12 implementation, and is a friend or a family member of the participant, may begin providing services
13 to the participant without having completed the mandatory orientation; provided that, the
14 participant has consented in writing to the delayed orientation and the individual provider has
15 signed a written attestation that they will complete the mandatory orientation within thirty (30) days
16 of beginning to provide services.

17 (b) The secretary shall maintain a registry for individual providers pursuant to its authority
18 under § 40-8.14-4(c)(4) and shall collaborate with the provider representative to maintain this
19 registry.

20 (c) The provisions of this section shall take effect on the date of implementation, as
21 provided in § 40-8.15-16(c).

22 **40-8.15-16. Implementation.**

23 (a) For purposes of this section, the independent provider (IP) program and the personal
24 choice program shall have the meanings that were set forth in 210-RICR-50-10-2.2(A)(1) and
25 (A)(2) as of the effective date of the personal choice in direct-support services act of 2023.

26 (b) The secretary shall merge the independent provider (IP) program into the personal
27 choice program, so that as of the date of implementation the state shall have a single self-directed
28 program known as the personal choice program.

29 (1) The secretary shall make all changes to regulations and practices as needed to
30 implement this merger.

31 (2) The secretary shall, within ninety (90) days of the effective date of the personal choice
32 in personal choice in direct-support services act of 2023, apply for any necessary federal approvals,
33 including by submitting any necessary Medicaid state plan amendments to the federal Centers for
34 Medicare & Medicaid Services.

1 (c) Once the secretary has implemented the merger of the IP program into the personal
2 choice program, and no later than ninety (90) days after any necessary federal approvals are
3 obtained, the secretary shall certify that the personal choice in direct-support services act of 2023
4 has been implemented. The date of that certification shall be the “date of implementation” for all
5 provisions of this chapter.

6 (d) Within thirty (30) days of the effective date of the personal choice in direct-support
7 services act on 2023, any provider organization that has previously been certified to serve as the
8 provider representative of any individual providers pursuant to § 40-8.15-7 shall be furnished by
9 the secretary with contact information for every person who is providing direct-support services
10 under the personal choice program or the independent provider model as of the effective date of
11 this act. The secretary shall provide any such provider organization with updated contact
12 information every thirty (30) days thereafter.

13 (e) Any provider organization that has previously been certified to serve as the provider
14 representative of any individual providers pursuant to § 40-8.15-7 may, prior to the date of
15 implementation, petition to be certified as the provider representative of the bargaining unit that
16 will be comprised of all the individual providers in the personal choice program after the date of
17 implementation. The secretary shall hold an election to determine whether such a provider
18 organization shall be certified as the provider representative for that bargaining unit upon a ten
19 percent (10%) showing of interest. All persons who are providing direct-support services under
20 either the independent provider model or the personal choice program shall be considered part of
21 the bargaining unit for purposes of the showing of interest and shall be eligible to vote in the
22 certification election. If a majority of those casting ballots vote to be represented by that provider
23 organization, then the provider organization shall be certified as the provider representative of all
24 individual providers in the state as of the date of implementation. The provisions of this chapter
25 shall otherwise apply.

26 (f) Nothing in this act shall be construed to alter or limit the rights of participants and their
27 representative to select, direct, and terminate the services of individual providers or to determine
28 individual providers’ wages within a range set by the secretary, or to alter or limit the secretary’s
29 authority to administer the personal choice program including to adopt rules and operate the
30 program, to determine participant budgets, to determine eligibility, or to authorize services, except
31 as specifically set forth in this chapter.

32 (g) Nothing in this act shall be construed to affect the administration or delivery of self-
33 directed programs for individuals with intellectual disabilities, consistent with 210-RICR-50-10-
34 2(B) as it existed as of the effective date of this act.

1 SECTION 5. 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

1 This act would, relative to the provision of home and community based services, provide
2 for the merger of the Independent Provider Program into the Personal Choice Program so that the
3 state has one self-directed program called the Personal Choice Program for direct support services.

4 This act would take effect upon passage.

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