

2019 -- H 5575

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO HUMAN SERVICES - QUALITY SELF-DIRECTED SERVICES -
INDIVIDUAL COMPANIONS OF COMPANIONSHIP AND HOMEMAKING SERVICES

Introduced By: Representatives Serpa, and Ackerman

Date Introduced: February 27, 2019

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

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

4 **40-8.14-1. Definitions.**

5 For purposes of this section:

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

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

13 ~~(3) "Direct support services" means the range of home and community based services~~
14 ~~(HCBS) covered services that are identified in the Medicaid state plan, Rhode Island's § 1115~~
15 ~~waiver, or any similar program that may provide similar services in the future, and the rules and~~
16 ~~regulations promulgated by the executive office of health and human services (EOHHS) or a~~
17 ~~designated agency authorize individual home care providers to provide. The direct support~~
18 ~~services must be provided in accordance with applicable federal and state law, rules, and~~

1 ~~regulations and include, but are not limited to, personal care assistance, homemaker, and~~
2 ~~companion services that the state is authorized to provide under the Medicaid state plan, the~~
3 ~~Medicaid Section 1115 waiver, or any similar program in the future, including:~~

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

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

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

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

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

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

16 (1) "Companionship" means fellowship to provide emotional and social support to
17 homebound clients.

18 ~~(4)~~(2) "Director" means the director of the Rhode Island department of administration.

19 ~~(5)~~(3) "Fiscal intermediary" means a third-party organization under contract with the
20 EOHHS responsible for performing payroll and other employment-related functions on behalf of
21 the participant.

22 (i) The fiscal intermediary shall:

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

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

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

29 (4) "Homemaking" means household chores and related housekeeping services in the
30 home for the sick, disabled, dependent, or infirm, and as further defined in § 23-17-2(9).

31 ~~(6)~~(5) "Individual ~~provider companion~~" means an individual selected by and working
32 under the direction of a Medicaid LTSS beneficiary or the beneficiary's duly authorized
33 representative to provide ~~direct support services~~ companionship and homemaking services to the
34 participant in accordance with the beneficiary's authorized service plan, ~~but does not include an~~

1 ~~employee of a provider agency, subject to the agency's direction and control commensurate with~~
2 ~~agency employee status or an individual providing services to a participant electing the personal~~
3 ~~choice option in any program.~~

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

8 ~~(8)~~(6) "Medicaid LTSS beneficiary" means a person who has completed a Medicaid long-
9 term services and supports application for assistance (DHS-2) and been determined by the state to
10 obtain Medicaid-funded long-term services and supports.

11 ~~(9)~~(7) "Participant" means a Medicaid LTSS beneficiary who receives ~~direct support~~
12 ~~services~~ companionship and homemaking services from an individual ~~provider~~ companion.

13 ~~(10)~~(8) "Participant's representative" means a participant's legal guardian or an individual
14 having the authority and responsibility to act on behalf of a participant with respect to the
15 provision of ~~direct support services~~ companionship and homemaking services.

16 ~~(11)~~(9) "Provider representative" means a provider organization that is certified as the
17 exclusive negotiating representative of individual ~~providers~~ companions ~~as provided in § 40-8.15-~~
18 ~~7.~~

19 ~~(12)~~(10) "Secretary" means the secretary of the Rhode Island executive office of health
20 and human services (EOHHS).

21 **40-8.14-2. Scope of coverage.**

22 Individual ~~providers~~ companions may provide services limited to companionship and
23 homemaking ~~all authorized HCBS covered services~~ in accordance with the participant's
24 authorized service plan at home and other Medicaid certified settings, to the extent the applicable
25 federal and state laws and rules and regulations allow. Participants shall be excluded from
26 utilizing the services of a home care provider, home nursing care provider, or hospice provider as
27 defined in § 23-17-2(8) or from any Medicaid LTSS demonstration project and accountable
28 care/entity program.

29 **40-8.14-3. Use of employee workforce.**

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

1 Nothing in this chapter shall restrict the state's ability to afford Medicaid LTSS
2 beneficiaries authorized to receive HCBS-covered services with the freedom of choice guaranteed
3 under Title XIX to enter into service delivery agreements with any ~~authorized-Medicaid~~
4 ~~Medicaid-contracted~~ provider that is licensed by the department of health. Individual companions
5 shall be prohibited from simultaneously possessing any department of health license nor shall be
6 permitted to simultaneously maintain employment with a long-term services and support provider
7 licensed by the department of health.

8 **40-8.14-4. Duties of the executive office for health and human services.**

9 (a) The secretary shall afford to all Medicaid LTSS beneficiaries who receive authorized
10 HCBS-covered services in accordance with a service plan the option of employing an individual
11 ~~provider~~ companion to provide ~~direct support services~~ companionship and homemaking services.

12 (b) ~~The secretary shall modify program operations as necessary to ensure implementation~~
13 ~~of the individual provider model and to ensure all relevant vendors assist and cooperate as~~
14 ~~needed, including managed care organizations and providers of fiscal support, fiscal intermediary,~~
15 ~~financial management, or similar services to provide support to participants and participants'~~
16 ~~representatives with regard to employing individual providers, and otherwise fulfill the~~
17 ~~requirements of this section, including the provisions of subsection (f) of this section.~~

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

19 (1) Establish reimbursement rates for all individual ~~providers~~ companions, in accordance
20 with chapter 8.15 of this title, provided that these rates may permit individual ~~provider~~ companion
21 variations based on traditional and relevant factors otherwise permitted by law; provided,
22 however, that reimbursement rates shall be required to be approved by the general assembly;

23 (2) Ensure delivery of required orientation programs for individual ~~providers~~
24 companions;

25 (3) Implement training and educational opportunities negotiated in accordance with
26 chapter 8.15 of this title for individual providers, as well as for participants and participants'
27 representatives who receive companionship and homemaking services from individual ~~providers~~
28 companions, including opportunities for individual ~~providers~~ companions to obtain certification
29 documenting additional training and experience in areas of specialization;

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

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

1 (ii) Enable participants and participants' representatives to gain improved access to, and
2 choice among, prospective individual ~~providers~~ companions, including by having access to
3 information about individual ~~providers'~~ companions' training, educational background, work
4 experience, national criminal background check results, and availability for hire;

5 (5) Establish ~~provider~~ companion qualification standards for individual ~~providers~~
6 companions, including undergoing a national criminal background check and behavior that would
7 disqualify someone as an individual ~~provider~~ companion;

8 (6) Establish other appropriate terms and conditions for the workforce of individual
9 ~~providers~~ companions without infringing on participants' or their responsible parties' rights and
10 responsibilities to hire, direct, supervise, or terminate the employment of their individual
11 ~~providers~~ companions;

12 (7) Establish an advisory board for participants, their representatives, and advocates, to
13 communicate directly with the secretary about the provision of quality, ~~direct support services~~
14 companionship and homemaking services.

15 (i) The board shall consist of ~~thirteen (13)~~ seventeen (17) members:

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

18 (B) ~~Six (6)~~ Nine (9) of whom shall be consumers of the individual provider model, ~~two~~
19 ~~(2)~~ three (3) to be appointed by the governor, ~~two (2)~~ three (3) to be appointed by the president of
20 the senate, and ~~two (2)~~ three (3) to be appointed by the speaker of the house;

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

24 (D) ~~Three of whom shall be from a 501(c)(3) statewide senior advocacy organization, one~~
25 ~~to be appointed by the governor, one to be appointed by the president of the senate, and one to be~~
26 ~~appointed by the speaker of the house~~ One shall be the state's long-term care ombudsman, or
27 designee;

28 (E) One shall be the executive director of the Rhode Island Partnership for Home Care or
29 designee;

30 (F) One shall be the executive director of the Rhode Island chapter of AARP or designee;

31 (G) One shall be the Executive Director of the Senior Agenda Coalition of Rhode Island
32 or designee.

33 (ii) The board members shall be appointed for three-year (3) terms.

34 (iii) The board shall advise the secretary, or a designee, regarding issues relating to the

1 quality, access, and consumer autonomy offered through the individual ~~provider~~ companion
2 model; and

3 (8) Contract with a fiscal intermediary service for the operations of the individual
4 ~~provider~~ companion model.

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

12 (e) The secretary shall cooperate in the implementation of chapter 8.15 of this title with
13 all other relevant state departments and agencies. Any entity providing relevant services,
14 including, but not limited to, providers of fiscal support, fiscal intermediary, financial
15 management, or similar services to provide support to participants and participants'
16 representatives with regard to employing individual ~~providers~~ companions shall assist and
17 cooperate with the secretary in the operations of this section, including with respect to the
18 secretary's obligations under subsections (b) and (f).

19 (f) The secretary, or a designee, shall, no later than October 1, 2019, and then quarterly
20 thereafter, in accordance with rules and regulations promulgated by EOHHS, compile and
21 maintain a list of the names and addresses of all individual ~~providers~~ companions who have been
22 paid for providing ~~direct-support~~ companionship and homemaking services to participants within
23 the previous six (6) months. ~~The list shall not include the name of any participant, or indicate that~~
24 ~~an individual provider is a relative of a participant or has the same address as a participant.~~ The
25 secretary, or a designee agency, shall share the lists with others as needed for the state to meet its
26 obligations under this chapter and chapter 8.15 of this title. This sharing shall not include access
27 to private data on participants or participants' representatives. Nothing in this section or chapter
28 8.15 of this title shall alter the access rights of other private parties to data on individual
29 providers.

30 (g) The secretary shall immediately commence all necessary steps to ensure that ~~direct-~~
31 ~~support~~ companionship and homemaking services are offered ~~in conformity with this section; to~~
32 ~~gather all information that may be needed for promptly compiling lists required under this~~
33 ~~section, including information from current vendors; and to complete any required modifications~~
34 ~~to currently providing direct support services~~ by October 1, 2019.

1 (h) The secretary will prohibit any individual companion from providing companionship
2 or homemaking services to a relative of a participant or an individual companion that resides in
3 the same household as a participant in order to prevent fraud, waste, abuse and neglect. All
4 participants seeking to utilize an individual companion shall not be restricted from access to any
5 personal choice waiver program.

6 **40-8.14-5. Authority of the department of administration.**

7 In accordance with chapter 8.15 of this title, the director shall have the authority to:

8 (1) Meet and negotiate with any ~~provider~~ individual companion representative chosen
9 pursuant to § 40-8.15-2(a);

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

14 (3) Execute a collective bargaining agreement, subject to any approval required under §
15 40-8.15-5.

16 SECTION 2. The title of Chapter 40-8.14 of the General Laws entitled "Quality Self-
17 Directed Services" is hereby amended to read as follows:

18 ~~CHAPTER 40-8.14~~

19 ~~Quality Self Directed Services~~

20 CHAPTER 40-8.14

21 QUALITY SELF-DIRECTED SERVICES - INDIVIDUAL COMPANIONS -

22 COMPANIONSHIP AND HOMEMAKING SERVICES

23 SECTION 3. Sections 40-8.15-1, 40-8.15-2, 40-8.15-3, 40-8.15-4, 40-8.15-6, 40-8.15-7,
24 40-8.15-8, 40-8.15-9, 40-8.15-10, 40-8.15-11 and 40-8.15-12 of the General Laws in Chapter 40-
25 8.15 entitled "Individual Providers of Direct-Support Services" are hereby amended to read as
26 follows:

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

28 For the purposes of this chapter:

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

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

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

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

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

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

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

3 ~~40-8.15-2. Right of individual providers to choose provider representative -- Subject~~
4 ~~of negotiation. Right of individual companions to choose collective bargaining~~
5 ~~representative -- Subject of negotiation.~~

6 (a) Individual ~~providers~~ companions may, in accordance with the procedures set forth in
7 § 40-8.15-7, individually choose or opt out of a ~~provider~~ collective bargaining organization to be
8 their ~~provider~~ representative and to negotiate with the state, over the terms and conditions of
9 individual ~~providers'~~ companions' participation in providing direct-support companionship and
10 homemaking services, including, but not limited to:

11 (1) Expanding training and professional development opportunities;

12 (2) Improving the recruitment and retention of qualified individual ~~providers~~
13 companions;

14 (3) Reimbursement rates and other economic matters;

15 (4) Benefits;

16 (5) Payment procedures; and

17 (6) A grievance resolution process.

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

22 (c) Notwithstanding the above, individual ~~providers~~ companions must operate in
23 conformance with the relevant sections of the general laws applicable thereto and regulations
24 promulgated by the state.

25 (d) The directors of each department with authority to administer their respective
26 programs shall work in consultation with the secretary regarding the terms and conditions of
27 individual ~~providers'~~ companions' participation in their respective programs including, but not
28 limited to, the terms and conditions in subsection (a) of this section.

29 **40-8.15-3. Good faith negotiations.**

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

1 **40-8.15-4. Unresolved issues -- Impasse procedures.**

2 In the event that the ~~provider~~ individual companion representative and the director, or a
3 designee, are unable to reach an agreement on a contract, or reach an impasse in negotiations, the
4 procedures of §§ 36-11-7.1 through 36-11-11 shall be followed.

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

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

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

17 **~~40-8.15-7. Certification and decertification of provider organization.~~ Certification**
18 **and decertification of companion organization.**

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

28 (b) The only appropriate unit shall consist of all individual ~~providers~~ companions in the
29 state.

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

33 (d) The cost of any certification election held under this section will be split equally
34 among all the ~~provider~~ individual companion organizations that appear on the ballot.

1 (e) As to deliver conflict-free case management services to participants and participant
2 representatives, no organized labor organization representing individual companions shall
3 represent any other collective bargaining unit representing any employees under the secretary or
4 any health or human service agency of the state or any other contractor of any health or human
5 service agency of the state.

6 **40-8.15-8. Unfair practices.**

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

12 **40-8.15-9. ~~Individual providers not state employees.~~ Individual companions are not**
13 **state employees.**

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

18 **40-8.15-10. ~~Right of families to select, direct and terminate individual providers.~~**
19 **Right of families to select, direct and terminate individual companions.**

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

22 **40-8.15-11. Strikes not authorized.**

23 Individual ~~providers~~ companions shall not engage in any strike or other collective
24 cessation of the delivery of ~~direct support~~ any services.

25 **40-8.15-12. State action exemption.**

26 The state action exemption to the application of state and federal antitrust laws is
27 applicable to the activities of individual ~~providers~~ companions and their ~~provider~~ individual
28 companion representative authorized under this chapter.

29 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 -
INDIVIDUAL COMPANIONS OF COMPANIONSHIP AND HOMEMAKING SERVICES

1 This act would make revisions to the provisions of the general laws that protect
2 beneficiaries from fraud, waste, abuse and neglect, and provides proper state oversight in cases
3 where long-term services and beneficiaries elect to use an individual companion for the delivery
4 of Medicaid services.

5 This act would take effect upon passage.

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