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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

Introduced By: Representative Christopher T. Millea

Date Introduced: March 28, 2019

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

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

3 **40-8.14-1. Definitions.**

4 For purposes of this section:

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

8 (2) "Applicant" means a person applying to the secretary for registration as an individual
9 provider.

10 (3) "Bureau of criminal identification" means the bureau of criminal identification of the
11 department of attorney general.

12 ~~(2)~~(4) "Covered home- and community-based services (HCBS)" means any core,
13 preventive, or specialized long-term-care services and supports available in a person's home or a
14 community-based living arrangement that the state is authorized to provide under the Medicaid
15 state plan, the Medicaid Section 1115 waiver, or any similar program.

16 ~~(3)~~(5) "Direct-support services" means the range of home- and community-based services
17 (HCBS) covered services that are identified in the Medicaid state plan, Rhode Island's § 1115
18 waiver, or any similar program that may provide similar services in the future, and the rules and
19 regulations promulgated by the executive office of health and human services (EOHHS) or a

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

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

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

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

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

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

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

18 ~~(4)~~(6) "Director" means the director of the Rhode Island department of administration.

19 (7) "Disqualifying information" means information produced by a national criminal
20 records check pertaining to a conviction for the following crimes: murder, manslaughter, first
21 degree sexual assault, second degree sexual assault, third degree sexual assault, assault on persons
22 sixty (60) years of age or older, assault with intent to commit specified felonies (murder, robbery,
23 rape, burglary, or the abominable and detestable crime against nature), felony assault, patient
24 abuse, neglect or mistreatment of patients, first degree arson, robbery, felony drug offenses,
25 larceny, abuse, neglect or exploitation of adults with severe impairments, fraud and false dealing,
26 theft, embezzlement, false pretenses, misappropriation, impersonation and identity fraud,
27 exploitation of elders, or felony banking law violations. For purposes of this subsection
28 "conviction" means, in addition to judgments of conviction entered by a court subsequent to a
29 finding of guilty or a plea of guilty, those instances where the defendant has entered a plea of
30 nolo contendere and has received a sentence of probation and those instances where a defendant
31 has entered into a deferred sentence agreement with the attorney general.

32 ~~(5)~~(8) "Fiscal intermediary" means a third-party organization under contract with the
33 EOHHS responsible for performing payroll and other employment-related functions on behalf of
34 the participant.

1 (i) The fiscal intermediary shall:

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

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

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

8 ~~(6)~~(9) "Individual provider" means an individual selected by and working under the
9 direction of a Medicaid LTSS beneficiary or the beneficiary's duly authorized representative to
10 provide direct-support services to the participant in accordance with the beneficiary's service
11 plan, but does not include an employee of a provider agency, subject to the agency's direction and
12 control commensurate with agency employee status or an individual providing services to a
13 participant electing the personal choice option in any program.

14 ~~(7)~~(10) "Instrumental activities of daily living" means the skills a person needs to live
15 safely and successfully in a residential setting of choice without outside supports. These skills
16 include, but are not limited to, using the telephone, traveling, shopping, preparing meals, doing
17 housework, taking medications properly, and managing money.

18 ~~(8)~~(11) "Medicaid LTSS beneficiary" means a person who has been determined by the
19 state to obtain Medicaid-funded long-term services and supports.

20 ~~(9)~~(12) "Participant" means a Medicaid LTSS beneficiary who receives direct-support
21 services from an individual provider.

22 ~~(10)~~(13) "Participant's representative" means a participant's legal guardian or an
23 individual having the authority and responsibility to act on behalf of a participant with respect to
24 the provision of direct-support services.

25 ~~(11)~~(14) "Provider representative" means a provider organization that is certified as the
26 exclusive negotiating representative of individual providers as provided in § 40-8.15-7.

27 ~~(12)~~(15) "~~secretary~~ Secretary" means the secretary of the Rhode Island executive office
28 of health and human services (EOHHS).

29 **40-8.14-4. Duties of the executive office for health and human services.**

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

33 (b) The secretary shall modify program operations as necessary to ensure implementation
34 of the individual provider model and to ensure all relevant vendors assist and cooperate as

1 needed, including managed care organizations and providers of fiscal support, fiscal intermediary,
2 financial management, or similar services to provide support to participants and participants'
3 representatives with regard to employing individual providers, and otherwise fulfill the
4 requirements of this section, including the provisions of subsection (f) of this section.

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

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

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

11 (3) Implement training and educational opportunities negotiated in accordance with
12 chapter 8.15 of this title for individual providers, as well as for participants and participants'
13 representatives who receive services from individual providers, including opportunities for
14 individual providers to obtain certification documenting additional training and experience in
15 areas of specialization; provided, however, that individual providers providing homemaking
16 services shall undergo training at least equivalent to the training requirements for homemakers
17 required by 216 RICR 40-10-17.5.3(K); provided further that individual providers performing the
18 duties of a nursing assistant shall be licensed as a nursing assistant in accordance with chapter
19 17.9 of title 23.

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

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

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

28 (5) Establish provider qualification standards for individual providers, including
29 undergoing a national criminal background check ~~and behavior that would disqualify someone as~~
30 ~~an individual provider~~ in accordance with the provisions of this chapter;

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

34 (7) Establish policies and procedures for individual providers to be supervised by a

1 [professional \(registered\) nurse](#);

2 ~~(7)~~(8) Establish an advisory board for participants, their representatives, and advocates, to
3 communicate directly with the secretary about the provision of quality, direct-support services.

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

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

7 (B) Six (6) of whom shall be consumers of the individual provider model, two (2) to be
8 appointed by the governor, two (2) to be appointed by the president of the senate, and two (2) to
9 be appointed by the speaker of the house;

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

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

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

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

19 ~~(8)~~(9) Contract with a fiscal intermediary service for the operations of the individual
20 provider model.

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

28 (e) The secretary shall cooperate in the implementation of chapter 8.15 of this title with
29 all other relevant state departments and agencies. Any entity providing relevant services,
30 including, but not limited to, providers of fiscal support, fiscal intermediary, financial
31 management, or similar services to provide support to participants and participants'
32 representatives with regard to employing individual providers shall assist and cooperate with the
33 secretary in the operations of this section, including with respect to the secretary's obligations
34 under subsections (b) and (f).

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

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

16 SECTION 2. Chapter 40-8.14 of the General Laws entitled "Quality Self-Directed
17 Services" is hereby amended by adding thereto the following section:

18 **40-8.14-7. Rights of participants.**

19 The secretary shall develop a written list of rights to be distributed to the participant
20 within five (5) calendar days of the initiation of services to the participant and thereafter, on an
21 annual basis. These rights include:

22 (1) The participant's right to be free from verbal, physical and psychological abuse and to
23 be treated with dignity;

24 (2) The participant's right to temporarily or permanently suspend, terminate, or add the
25 provision of any services stated in the service plan;

26 (3) The participant's right to have property treated with respect;

27 (4) The participant's right to voice grievances regarding services furnished or regarding
28 the lack of respect for property by anyone who is furnishing services and that the participant shall
29 not be subject to discrimination or reprisal for doing so;

30 (5) A statement that it is not within the scope of the services to manage the medical and
31 health conditions of the participants; and

32 (6) The procedure and contact information to file a complaint with the secretary.

33 **40-8.14-8. Complaint process.**

34 The secretary shall establish a process for participants to file complaints regarding the

1 provision of services by individual providers in the quality self-directed services program. The
2 secretary shall investigate complaints made by a participant, the participant's family, or the
3 participant's representative regarding services that are or have failed to be furnished or lack of
4 respect for the participant's property by the individual provider. The secretary shall document the
5 existence of the complaint and resolution of the complaint.

6 **40-8.14-9. National criminal records check.**

7 (a) Any person seeking to become an individual provider shall undergo a national
8 criminal records check to be initiated prior to applying for registration.

9 (b) The applicant shall apply to the bureau of criminal identification for a national
10 criminal records check that shall be supported by fingerprints submitted to the Federal Bureau of
11 Investigation ("FBI").

12 (1) Upon the discovery of any disqualifying information, the bureau of criminal
13 identification shall inform the applicant, in writing, of the nature of the disqualifying information;
14 and, without disclosing the nature of the disqualifying information, will notify the secretary, in
15 writing, that disqualifying information has been discovered. The secretary may not deny
16 registration based on the existence of disqualifying information. However, the secretary shall
17 alert the hiring participant that disqualifying information has been discovered on a registrant's
18 national criminal records check. The registrant, on whom disqualifying information has been
19 found may provide the participant a copy of the national criminal records check. The participant
20 shall make a judgment regarding the employment or continued employment of a registrant.

21 (2) In those situations in which no disqualifying information has been found, the bureau
22 of criminal identification shall inform the applicant and the secretary, in writing.

23 (c) It shall be the responsibility of the applicant to pay for the national criminal records
24 check.

25 **40-8.14-10. Denial, suspension, or revocation of individual provider registration.**

26 The secretary, after notice and opportunity for a hearing to the applicant or individual
27 provider, is authorized to deny, suspend, or revoke a registration in any case in which it finds that
28 there has been failure to comply with the requirements under this chapter and the rules and
29 regulations promulgated thereto or the individual provider has been convicted of an offense that is
30 considered disqualifying information. The notice shall be effected by registered or certified mail
31 or by personal service, setting forth the particular reasons for the proposed action and fixing a
32 date not less than thirty (30) days from the date of the mailing or service, at which time the
33 applicant or individual provider shall be given an opportunity for a prompt and fair hearing. On
34 the basis of the hearing, or upon the failure of the applicant or individual provider to appear, the

1 secretary shall make a determination specifying its findings of fact and conclusions of law. A
2 copy of the determination shall be sent by registered or certified mail or served personally upon
3 the applicant or individual provider. The decision denying, suspending, or revoking the
4 registration shall become final thirty (30) days after it is so mailed or served, unless the applicant
5 or individual provider, within the thirty (30) day period, appeals the decision pursuant to § 42-35-
6 15. The procedure governing hearings authorized by this section shall be in accordance with §§
7 42-35-9 and 42-35-13 as stipulated in § 42-35-14. A full and complete record shall be kept of all
8 proceedings, and all testimony shall be reported but need not be transcribed unless the decision is
9 appealed pursuant to § 42-35-15. A copy or copies of the transcript may be obtained by an
10 interested party on payment of the cost of preparing the copy or copies. Witnesses may be
11 subpoenaed by either party.

12 **40-8.14-11. Judicial review of certificate of registration action.**

13 Any person who has exhausted all administrative remedies available to them within the
14 secretariat, and who is aggrieved by a final decision of the secretary, is entitled to judicial review
15 in accordance with the provisions of §§ 42-35-15 and 42-35-16.

16 **40-8.14-12. Immunity from liability.**

17 No person who disqualifies an individual from employment or continued employment
18 within thirty (30) days of receipt of a letter containing disqualifying information or of a national
19 criminal records check relating to that information shall be liable for civil damages or subject to
20 any claim, cause of action, or proceeding of any nature as a result of the disqualification.

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

1 This act would establish minimum qualifications for providers of covered home- and
2 community-based services and direct-support services and would grant certain rights, and a
3 complaint process, to participants who receive direct-support services.

4 This act would take effect upon passage.

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