

**2014 -- S 2471 SUBSTITUTE A**

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LC003971/SUB A  
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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2014**

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A N A C T

RELATING TO HUMAN SERVICES - PUBLIC ASSISTANCE ACT

Introduced By: Senators DiPalma, Felag, Ottiano, Bates, and Pichardo

Date Introduced: February 27, 2014

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 40-8.9-9 of the General Laws in Chapter 40-8.9 entitled "Medical  
2 Assistance - Long-Term Care Service and Finance Reform" is hereby amended to read as  
3 follows:

4           **40-8.9-9. Long-term care re-balancing system reform goal.** -- (a) Notwithstanding any  
5 other provision of state law, the department of human services is authorized and directed to apply  
6 for and obtain any necessary waiver(s), waiver amendment(s) and/or state plan amendments from  
7 the secretary of the United States department of health and human services, and to promulgate  
8 rules necessary to adopt an affirmative plan of program design and implementation that addresses  
9 the goal of allocating a minimum of fifty percent (50%) of Medicaid long-term care funding for  
10 persons aged sixty-five (65) and over and adults with disabilities, in addition to services for  
11 persons with developmental disabilities and mental disabilities, to home and community-based  
12 care on or before December 31, 2013; provided, further, the executive office of health and human  
13 services shall report annually as part of its budget submission, the percentage distribution  
14 between institutional care and home and community-based care by population and shall report  
15 current and projected waiting lists for long-term care and home and community-based care  
16 services. The department is further authorized and directed to prioritize investments in home and  
17 community-based care and to maintain the integrity and financial viability of all current long-  
18 term care services while pursuing this goal.

19           (b) The reformed long-term care system re-balancing goal is person-centered and

1 encourages individual self-determination, family involvement, interagency collaboration, and  
2 individual choice through the provision of highly specialized and individually tailored home-  
3 based services. Additionally, individuals with severe behavioral, physical, or developmental  
4 disabilities must have the opportunity to live safe and healthful lives through access to a wide  
5 range of supportive services in an array of community-based settings, regardless of the  
6 complexity of their medical condition, the severity of their disability, or the challenges of their  
7 behavior. Delivery of services and supports in less costly and less restrictive community settings,  
8 will enable children, adolescents and adults to be able to curtail, delay or avoid lengthy stays in  
9 long-term care institutions, such as behavioral health residential treatment facilities, long-term  
10 care hospitals, intermediate care facilities and/or skilled nursing facilities.

11 (c) Pursuant to federal authority procured under section 42-7.2-16 of the general laws,  
12 the department of human services is directed and authorized to adopt a tiered set of criteria to be  
13 used to determine eligibility for services. Such criteria shall be developed in collaboration with  
14 the state's health and human services departments and, to the extent feasible, any consumer  
15 group, advisory board, or other entity designated for such purposes, and shall encompass  
16 eligibility determinations for long-term care services in nursing facilities, hospitals, and  
17 intermediate care facilities for the mentally retarded as well as home and community-based  
18 alternatives, and shall provide a common standard of income eligibility for both institutional and  
19 home and community-based care. The department is, subject to prior approval of the general  
20 assembly, authorized to adopt criteria for admission to a nursing facility, hospital, or  
21 intermediate care facility for the mentally retarded that are more stringent than those employed  
22 for access to home and community-based services. The department is also authorized to  
23 promulgate rules that define the frequency of re-assessments for services provided for under this  
24 section. Legislatively approved levels of care may be applied in accordance with the following:

25 (1) The department shall apply pre-waiver level of care criteria for any Medicaid  
26 recipient eligible for a nursing facility, hospital, or intermediate care facility for the mentally  
27 retarded as of June 30, 2009, unless the recipient transitions to home and community based  
28 services because he or she: (a) Improves to a level where he/she would no longer meet the pre-  
29 waiver level of care criteria; or (b) The individual chooses home and community based services  
30 over the nursing facility, hospital, or intermediate care facility for the mentally retarded. For the  
31 purposes of this section, a failed community placement, as defined in regulations promulgated by  
32 the department, shall be considered a condition of clinical eligibility for the highest level of care.  
33 The department shall confer with the long-term care ombudsperson with respect to the  
34 determination of a failed placement under the ombudsperson's jurisdiction. Should any Medicaid

1 recipient eligible for a nursing facility, hospital, or intermediate care facility for the mentally  
2 retarded as of June 30, 2009 receive a determination of a failed community placement, the  
3 recipient shall have access to the highest level of care; furthermore, a recipient who has  
4 experienced a failed community placement shall be transitioned back into his or her former  
5 nursing home, hospital, or intermediate care facility for the mentally retarded whenever possible.  
6 Additionally, residents shall only be moved from a nursing home, hospital, or intermediate care  
7 facility for the mentally retarded in a manner consistent with applicable state and federal laws.

8 (2) Any Medicaid recipient eligible for the highest level of care who voluntarily leaves a  
9 nursing home, hospital, or intermediate care facility for the mentally retarded shall not be subject  
10 to any wait list for home and community based services.

11 (3) No nursing home, hospital, or intermediate care facility for the mentally retarded  
12 shall be denied payment for services rendered to a Medicaid recipient on the grounds that the  
13 recipient does not meet level of care criteria unless and until the department of human services  
14 has: (i) performed an individual assessment of the recipient at issue and provided written notice to  
15 the nursing home, hospital, or intermediate care facility for the mentally retarded that the  
16 recipient does not meet level of care criteria; and (ii) the recipient has either appealed that level of  
17 care determination and been unsuccessful, or any appeal period available to the recipient  
18 regarding that level of care determination has expired.

19 (d) The department of human services is further authorized and directed to consolidate  
20 all home and community-based services currently provided pursuant to section 1915(c) of title  
21 XIX of the United States Code into a single system of home and community-based services that  
22 include options for consumer direction and shared living. The resulting single home and  
23 community-based services system shall replace and supersede all section 1915(c) programs when  
24 fully implemented. Notwithstanding the foregoing, the resulting single program home and  
25 community-based services system shall include the continued funding of assisted living services  
26 at any assisted living facility financed by the Rhode Island housing and mortgage finance  
27 corporation prior to January 1, 2006, and shall be in accordance with chapter 66.8 of title 42 of  
28 the general laws as long as assisted living services are a covered Medicaid benefit.

29 (e) The department of human services is authorized to promulgate rules that permit  
30 certain optional services including, but not limited to, homemaker services, home modifications,  
31 respite, and physical therapy evaluations to be offered subject to availability of state-appropriated  
32 funding for these purposes.

33 (f) To promote the expansion of home and community-based service capacity, the  
34 department of human services is authorized and directed to pursue rate reform for homemaker,

1 personal care (home health aide) and adult day care services, as follows:

2 (1) A prospective base adjustment effective, not later than July 1, 2008, across all  
3 departments and programs, of ten percent (10%) of the existing standard or average rate,  
4 contingent upon a demonstrated increase in the state-funded or Medicaid caseload by June 30,  
5 2009;

6 (2) Development, not later than September 30, 2008, of certification standards  
7 supporting and defining targeted rate increments to encourage service specialization and  
8 scheduling accommodations including, but not limited to, medication and pain management,  
9 wound management, certified Alzheimer's Syndrome treatment and support programs, and shift  
10 differentials for night and week-end services; and

11 (3) Development and submission to the governor and the general assembly, not later than  
12 December 31, 2008, of a proposed rate-setting methodology for home and community-based  
13 services to assure coverage of the base cost of service delivery as well as reasonable coverage of  
14 changes in cost caused by wage inflation.

15 (g) The department, in collaboration with the executive office of human services, shall  
16 implement a long-term care options counseling program to provide individuals or their  
17 representatives, or both, with long-term care consultations that shall include, at a minimum,  
18 information about: long-term care options, sources and methods of both public and private  
19 payment for long-term care services and an assessment of an individual's functional capabilities  
20 and opportunities for maximizing independence. Each individual admitted to or seeking  
21 admission to a long-term care facility regardless of the payment source shall be informed by the  
22 facility of the availability of the long-term care options counseling program and shall be provided  
23 with long-term care options consultation if they so request. Each individual who applies for  
24 Medicaid long-term care services shall be provided with a long-term care consultation.

25 (h) The department of human services is also authorized, subject to availability of  
26 appropriation of funding, to pay for certain expenses necessary to transition residents back to the  
27 community; provided, however, payments shall not exceed an annual or per person amount.

28 (i) To assure the continued financial viability of nursing facilities, the department of  
29 human services is authorized and directed to develop a proposal for revisions to section 40-8-19  
30 that reflect the changes in cost and resident acuity that result from implementation of this re-  
31 balancing goal. Said proposal shall be submitted to the governor and the general assembly on or  
32 before January 1, 2010.

33 (j) To ensure persons with long-term care needs who remain living at home have  
34 adequate resources to deal with housing maintenance and unanticipated housing related costs, the

1 department of human services is authorized to develop higher resource eligibility limits for  
2 persons on home and community waiver services who are living in their own homes or rental  
3 units.

4 (k) To promote increased access to assisted living services for Medicaid beneficiaries, as  
5 appropriate, and to rebalance the long-term care system, the executive office of health and human  
6 services ("executive office") shall submit a plan for reimbursement rate rationalization and reform  
7 for assisted living in accordance with the following:

8 (1) The plan shall include a tiered, acuity based reimbursement system for Medicaid  
9 assisted living services, to replace the existing per diem flat rate, that establishes the lowest  
10 payment tier no lower than the flat rate in existence on January 1, 2014;

11 (2) The plan shall include a fiscal analysis of incorporating annual adjustments to the  
12 Medicaid assisted living services reimbursement rates by a percentage amount equal to the  
13 change in a recognized national long-term care inflation index to be applied on October 1 of each  
14 year;

15 (3) The plan shall include options for an enhanced Medicaid services reimbursement rate  
16 for assisted living residences that are required by regulation to offer single-occupant apartments;

17 (4) The plan shall include options for reimbursement rate adjustments for state licensed  
18 assisted living residences that are not eligible to receive funding under Title XIX of the Social  
19 Security Act, 42 U.S.C. 1381 et seq.;

20 (5) Development of the plan shall include regular and ongoing consultation with  
21 representatives from relevant stakeholder groups, including, but not limited to, the organizations  
22 representing providers of assisted living care; and

23 (6) The executive office shall provide the speaker of the house and senate president with  
24 an assisted living reimbursement rate rationalization and reform plan in accordance with this  
25 section, no later than October 15, 2014.

26 SECTION 2. 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 - PUBLIC ASSISTANCE ACT

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1           This act would require the executive office of health and human services to submit a plan  
2 for reimbursement rate rationalization and reform to promote access to assisted living service for  
3 Medicaid beneficiaries.

4           This act would take effect upon passage.

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