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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO HUMAN SERVICES - PUBLIC ASSISTANCE

Introduced By: Senators DiPalma, Ottiano, Pichardo, and Goldin

Date Introduced: May 02, 2013

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 40-6-27 of the General Laws in Chapter 40-6 entitled "Public  
2 Assistance Act" is hereby amended to read as follows:

3 **40-6-27. Supplemental security income. --** (a) (1) The director of the department is  
4 hereby authorized to enter into agreements on behalf of the state with the secretary of the  
5 Department of Health and Human Services or other appropriate federal officials, under the  
6 supplementary and security income (SSI) program established by title XVI of the Social Security  
7 Act, 42 U.S.C. section 1381 et seq., concerning the administration and determination of eligibility  
8 for SSI benefits for residents of this state, except as otherwise provided in this section. The state's  
9 monthly share of supplementary assistance to the supplementary security income program shall  
10 be as follows:

11	(i) Individual living alone:	\$39.92
12	(ii) Individual living with others:	\$51.92
13	(iii) Couple living alone:	\$79.38
14	(iv) Couple living with others:	\$97.30
15	(v) Individual living in state licensed assisted living residence:	<del>\$332.00</del> <u>\$538.00</u>
16	(vi) Individual living in state licensed supportive residential	
17	care settings that, depending on the population served, meet	
18	the standards set by the department of human services in	
19	conjunction with the department(s) of children, youth and	

1 families, elderly affairs and/or behavioral healthcare,  
2 developmental disabilities and hospitals: \$300.00.

3 Provided, however, that ~~the department of human services shall by regulation reduce,~~  
4 ~~effective January 1, 2009, the state's monthly share of supplementary assistance to the~~  
5 ~~supplementary security income program for each of the above listed payment levels, by the same~~  
6 ~~value as the annual federal cost of living adjustment to be published by the federal social security~~  
7 ~~administration in October 2008 and becoming effective on January 1, 2009, as determined under~~  
8 ~~the provisions of title XVI of the federal social security act [42 U.S.C. section 1381 et seq.] and~~  
9 ~~provided further, that it is the intent of the general assembly that the January 1, 2009 reduction in~~  
10 ~~the state's monthly share shall not cause a reduction in the combined federal and state payment~~  
11 ~~level for each category of recipients in effect in the month of December 2008; effective January~~  
12 1, 2014, and each January 1 thereafter, the department of human services shall increase the  
13 payment for individuals living in state licensed assisted living, subject to appropriation, by a  
14 percentage amount equal to the percentage rise in the United States consumer price index (CPI)  
15 for January 1 of that year; provided further, that the department of human services is authorized  
16 and directed to provide for payments to recipients in accordance with the above directives.

17 (2) As of July 1, 2010, state supplement payments shall not be federally administered and  
18 shall be paid directly by the department of human services to the recipient.

19 (3) Individuals living in institutions shall receive a twenty dollar (\$20.00) per month  
20 personal needs allowance from the state which shall be in addition to the personal needs  
21 allowance allowed by the Social Security Act, 42 U.S.C. section 301 et seq.

22 (4) Individuals living in state licensed supportive residential care settings and assisted  
23 living residences who are receiving SSI shall be allowed to retain a minimum personal needs  
24 allowance of fifty-five dollars (\$55.00) per month from their SSI monthly benefit prior to  
25 payment of any monthly fees.

26 (5) To ensure that supportive residential care or an assisted living residence is a safe and  
27 appropriate service setting, the department is authorized and directed to make a determination of  
28 the medical need and whether a setting provides the appropriate services for those persons who:

29 (i) Have applied for or are receiving SSI, and who apply for admission to supportive  
30 residential care setting and assisted living residences on or after October 1, 1998; or

31 (ii) Who are residing in supportive residential care settings and assisted living residences,  
32 and who apply for or begin to receive SSI on or after October 1, 1998.

33 (6) The process for determining medical need required by subsection (4) of this section  
34 shall be developed by the office of health and human services in collaboration with the

1 departments of that office and shall be implemented in a manner that furthers the goals of  
2 establishing a statewide coordinated long-term care entry system as required pursuant to the  
3 Global Consumer Choice Compact Waiver.

4 (7) To assure access to high quality coordinated services, the department is further  
5 authorized and directed to establish rules specifying the payment certification standards that must  
6 be met by those state licensed supportive residential care settings and assisted living residences  
7 admitting or serving any persons eligible for state-funded supplementary assistance under this  
8 section. Such payment certification standards shall define:

9 (i) The scope and frequency of resident assessments, the development and  
10 implementation of individualized service plans, staffing levels and qualifications, resident  
11 monitoring, service coordination, safety risk management and disclosure, and any other related  
12 areas;

13 (ii) The procedures for determining whether the payment certifications standards have  
14 been met; and

15 (iii) The criteria and process for granting a one time, short-term good cause exemption  
16 from the payment certification standards to a licensed supportive residential care setting or  
17 assisted living residence that provides documented evidence indicating that meeting or failing to  
18 meet said standards poses an undue hardship on any person eligible under this section who is a  
19 prospective or current resident.

20 (8) The payment certification standards required by this section shall be developed in  
21 collaboration by the departments, under the direction of the executive office of health and human  
22 services, so as to ensure that they comply with applicable licensure regulations either in effect or  
23 in development.

24 (b) The department is authorized and directed to provide additional assistance to  
25 individuals eligible for SSI benefits for:

26 (1) Moving costs or other expenses as a result of an emergency of a catastrophic nature  
27 which is defined as a fire or natural disaster; and

28 (2) Lost or stolen SSI benefit checks or proceeds of them; and

29 (3) Assistance payments to SSI eligible individuals in need because of the application of  
30 federal SSI regulations regarding estranged spouses; and the department shall provide such  
31 assistance in a form and amount, which the department shall by regulation determine.

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

1           **40-8.9.9. Long-term care re-balancing system reform goal.** -- (a) Notwithstanding any  
2 other provision of state law, the department of human services is authorized and directed to apply  
3 for and obtain any necessary waiver(s), waiver amendment(s) and/or state plan amendments from  
4 the secretary of the United States department of health and human services, and to promulgate  
5 rules necessary to adopt an affirmative plan of program design and implementation that addresses  
6 the goal of allocating a minimum of fifty percent (50%) of Medicaid long-term care funding for  
7 persons aged sixty-five (65) and over and adults with disabilities, in addition to services for  
8 persons with developmental disabilities and mental disabilities, to home and community-based  
9 care on or before December 31, 2013; provided, further, the executive office of health and human  
10 services shall report annually as part of its budget submission, the percentage distribution  
11 between institutional care and home and community-based care by population and shall report  
12 current and projected waiting lists for long-term care and home and community-based care  
13 services. The department is further authorized and directed to prioritize investments in home and  
14 community-based care and to maintain the integrity and financial viability of all current long-  
15 term care services while pursuing this goal.

16           (b) The reformed long-term care system re-balancing goal is person-centered and  
17 encourages individual self-determination, family involvement, interagency collaboration, and  
18 individual choice through the provision of highly specialized and individually tailored home-  
19 based services. Additionally, individuals with severe behavioral, physical, or developmental  
20 disabilities must have the opportunity to live safe and healthful lives through access to a wide  
21 range of supportive services in an array of community-based settings, regardless of the  
22 complexity of their medical condition, the severity of their disability, or the challenges of their  
23 behavior. Delivery of services and supports in less costly and less restrictive community settings,  
24 will enable children, adolescents and adults to be able to curtail, delay or avoid lengthy stays in  
25 long-term care institutions, such as behavioral health residential treatment facilities, long-term  
26 care hospitals, intermediate care facilities and/or skilled nursing facilities.

27           (c) Pursuant to federal authority procured under section 42-7.2-16 of the general laws,  
28 the department of human services is directed and authorized to adopt a tiered set of criteria to be  
29 used to determine eligibility for services. Such criteria shall be developed in collaboration with  
30 the state's health and human services departments and, to the extent feasible, any consumer  
31 group, advisory board, or other entity designated for such purposes, and shall encompass  
32 eligibility determinations for long-term care services in nursing facilities, hospitals, and  
33 intermediate care facilities for the mentally retarded as well as home and community-based  
34 alternatives, and shall provide a common standard of income eligibility for both institutional and

1 home and community-based care. The department is, subject to prior approval of the general  
2 assembly, authorized to adopt criteria for admission to a nursing facility, hospital, or  
3 intermediate care facility for the mentally retarded that are more stringent than those employed  
4 for access to home and community-based services. The department is also authorized to  
5 promulgate rules that define the frequency of re-assessments for services provided for under this  
6 section. Legislatively approved levels of care may be applied in accordance with the following:

7 (1) The department shall apply pre-waiver level of care criteria for any Medicaid  
8 recipient eligible for a nursing facility, hospital, or intermediate care facility for the mentally  
9 retarded as of June 30, 2009, unless the recipient transitions to home and community based  
10 services because he or she: (a) Improves to a level where he/she would no longer meet the pre-  
11 waiver level of care criteria; or (b) The individual chooses home and community based services  
12 over the nursing facility, hospital, or intermediate care facility for the mentally retarded. For the  
13 purposes of this section, a failed community placement, as defined in regulations promulgated by  
14 the department, shall be considered a condition of clinical eligibility for the highest level of care.  
15 The department shall confer with the long-term care ombudsperson with respect to the  
16 determination of a failed placement under the ombudsperson's jurisdiction. Should any Medicaid  
17 recipient eligible for a nursing facility, hospital, or intermediate care facility for the mentally  
18 retarded as of June 30, 2009 receive a determination of a failed community placement, the  
19 recipient shall have access to the highest level of care; furthermore, a recipient who has  
20 experienced a failed community placement shall be transitioned back into his or her former  
21 nursing home, hospital, or intermediate care facility for the mentally retarded whenever possible.  
22 Additionally, residents shall only be moved from a nursing home, hospital, or intermediate care  
23 facility for the mentally retarded in a manner consistent with applicable state and federal laws.

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

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

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

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

15 (f) To promote the expansion of home and community-based service capacity, the  
16 department of human services is authorized and directed to pursue rate reform for homemaker,  
17 personal care (home health aide) and adult day care services, as follows:

18 (1) A prospective base adjustment effective, not later than July 1, 2008, across all  
19 departments and programs, of ten percent (10%) of the existing standard or average rate,  
20 contingent upon a demonstrated increase in the state-funded or Medicaid caseload by June 30,  
21 2009;

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

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

31 (g) The department, in collaboration with the executive office of human services, shall  
32 implement a long-term care options counseling program to provide individuals or their  
33 representatives, or both, with long-term care consultations that shall include, at a minimum,  
34 information about: long-term care options, sources and methods of both public and private

1 payment for long-term care services and an assessment of an individual's functional capabilities  
2 and opportunities for maximizing independence. Each individual admitted to or seeking  
3 admission to a long-term care facility regardless of the payment source shall be informed by the  
4 facility of the availability of the long-term care options counseling program and shall be provided  
5 with long-term care options consultation if they so request. Each individual who applies for  
6 Medicaid long-term care services shall be provided with a long-term care consultation.

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

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

15 (j) To ensure persons with long-term care needs who remain living at home have  
16 adequate resources to deal with housing maintenance and unanticipated housing related costs, the  
17 department of human services is authorized to develop higher resource eligibility limits for  
18 persons on home and community waiver services who are living in their own homes or rental  
19 units.

20 (k) To promote increased access to assisted living services for Medicaid beneficiaries and  
21 to accelerate the rebalancing of the long-term care system, the executive office of health and  
22 human services ("executive office") shall pursue reimbursement rate reform for assisted living. In  
23 pursuing assisted living reimbursement rate reform, the executive office shall:

24 (1) Solicit input and consult regularly with representatives from relevant stakeholder  
25 groups, including, but not limited to, the Rhode assisted living association and leading age RI;

26 (2) Include in the assisted living reimbursement rate reform plan, at a minimum, the  
27 following elements:

28 (i) A tiered, acuity based reimbursement system for Medicaid assisted living services to  
29 replace the existing per diem flat rate. In pursuing a tiered reimbursement system, the office shall  
30 ensure that the lowest payment tier is no lower than the flat rate in existence on January 1, 2013;

31 (ii) Annual adjustments to the Medicaid assisted living services reimbursement rates by a  
32 percentage amount equal to the percentage rise in the United States consumer price index (CPI)  
33 for January 1 of that year.

34 (3) Explore options for an enhanced Medicaid services reimbursement rate for assisted

1 living residences that are required by regulation to offer single-occupant apartments.

2 (4) Provide the speaker of the house of representatives, president of the senate,  
3 chairperson of the house committee on health education and welfare and chairperson of the senate  
4 committee on health and human services with an assisted living rate reform progress report no  
5 later than October 1, 2013;

6 (5) The executive office is hereby authorized and directed to file a state plan amendment  
7 with the U.S. department of health and human services in order to implement assisted living  
8 reimbursement rate reform no later than January 1, 2014.

9 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 - PUBLIC ASSISTANCE

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1           This act would increase the state's monthly share of supplementary assistance to the  
2 supplementary security income program from \$332.00 to \$538.00. This act would also provide  
3 guidelines to promote reimbursement rate reform for assisted living.

4           This act would take effect upon passage.

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