

2009 -- H 5112

LC00633

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO CENTERS FOR MEDICARE AND MEDICAID SERVICES WAIVER AND
EXPENDITURE AUTHORITY

Introduced By: Representatives Costantino, Naughton, Slater, Giannini, and Almeida

Date Introduced: January 15, 2009

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 42-12.4 of the General Laws entitled "The Rhode Island Medicaid
2 Reform Act of 2008" is hereby amended by adding thereto the following section:

3 **42-12.4-7. Demonstration implementation - Restrictions.** -- The executive office of
4 health and human services and the department of human services may implement the Rhode
5 Island global consumer choice compact demonstration ("the demonstration"), subject to the
6 following restrictions:

7 (1) Notwithstanding the provisions of the demonstration, any change that requires the
8 implementation of a rule or regulation or modification of a rule or regulation in existence prior to
9 the demonstration shall require prior approval of the general assembly;

10 (2) Notwithstanding the provisions of the demonstration, any Category II change or
11 Category III change, as defined in the demonstration, shall require the prior approval of the
12 general assembly.

13 **42-12.4-8. Demonstration termination.** -- In the event the demonstration is suspended
14 or terminated for any reason, or in the event that the demonstration expires, the department of
15 human services, in conjunction with the executive office of health and human services, is directed
16 and authorized to apply for and obtain all waivers in existence prior to the acceptance of the
17 demonstration. The department of human services and the executive office of health and human
18 services to the extent possible shall ensure that said waivers are reinstated prior to any

1 [suspension, termination, or expiration of the demonstration.](#)

2 SECTION 2. Section 40-8.4-19 of the General Laws in Chapter 40-8.4 entitled "Health
3 Care For Families" is hereby amended to read as follows:

4 **40-8.4-19. Managed health care delivery systems for families.** -- (a) Notwithstanding
5 any other provision of state law, the delivery and financing of the health care services provided
6 under this chapter shall be provided through a system of managed care. "Managed care" is
7 defined as systems that: integrate an efficient financing mechanism with quality service delivery;
8 provide a "medical home" to assure appropriate care and deter unnecessary services; and place
9 emphasis on preventive and primary care. ~~For the purposes of Medical Assistance, managed care~~
10 ~~systems are defined to include a primary care case management model in which ancillary services~~
11 ~~are provided under the direction of a physician in a practice that meets standards established by~~
12 ~~the department of human services, including standards pertaining to certification as an "advanced~~
13 ~~medical home".~~

14 (b) Enrollment in managed care health delivery systems is mandatory for individuals
15 eligible for medical assistance under this chapter. This includes children in substitute care,
16 children receiving Medical Assistance through an adoption subsidy, and children eligible for
17 medical assistance based on their disability. Beneficiaries with third-party medical coverage or
18 insurance may be exempt from mandatory managed care in accordance with rules and regulations
19 promulgated by the department of human services for such purposes.

20 (c) Individuals who can afford to contribute shall share in the cost. - The department of
21 human services is authorized and directed to apply for and obtain any necessary waivers and/or
22 state plan amendments from the secretary of the U.S. department of health and human services,
23 including, but not limited to, a waiver of the appropriate sections of Title XIX, 42 U.S.C. section
24 1396 et seq., to require that beneficiaries eligible under this chapter or chapter 12.3 of title 42,
25 with incomes equal to or greater than one hundred thirty-three percent (133%) of the federal
26 poverty level, pay a share of the costs of health coverage based on the ability to pay. The
27 department of human services shall implement this cost-sharing obligation by regulation, and
28 shall consider co-payments, premium shares, or other reasonable means to do so in accordance
29 with approved provisions of appropriate waivers and/or state plan amendments approved by the
30 secretary of the United States department of health and human services.

31 ~~(d) All children and families receiving Medical Assistance under title 40 of the Rhode~~
32 ~~Island general laws shall also be subject to co-payments for certain medical services as approved~~
33 ~~in the waiver and/or the applicable state plan amendment, and in accordance with rules and~~
34 ~~regulations promulgated by the department.~~

1 ~~-(e) The department of human services may provide health benefits, similar to those~~
2 ~~available through commercial health plans, to parents or relative caretakers with an income above~~
3 ~~one hundred percent (100%) of the federal poverty level who are not receiving cash assistance~~
4 ~~under the Rhode Island Temporary Assistance to Needy Families (TANF program).~~

5 ~~-(f) The department of human services is authorized to create consumer directed health~~
6 ~~care accounts, including but not limited to health opportunity accounts or health savings accounts,~~
7 ~~in order to increase and encourage personal responsibility, wellness and healthy decision making,~~
8 ~~disease management, and to provide tangible incentives for beneficiaries who meet designated~~
9 ~~wellness initiatives.~~

10 SECTION 3. Section 40-8.5-1.1 of the General Laws in Chapter 40-8.5 entitled "Health
11 Care for Elderly and Disabled Residents Act" is hereby amended to read as follows:

12 **40-8.5-1.1. Managed health care delivery systems.** -- (a) To ensure that all medical
13 assistance beneficiaries, including the elderly and all individuals with disabilities, have access to
14 quality and affordable health care, the department of human services is authorized to implement
15 mandatory managed care health systems.

16 (b) "Managed care" is defined as systems that: integrate an efficient financing
17 mechanism with quality service delivery; provides a "medical home" to assure appropriate care
18 and deter unnecessary services; and place emphasis on preventive and primary care. For purposes
19 of Medical Assistance, managed care systems are also defined to include a primary care case
20 management model in which ancillary services are provided under the direction of a physician in
21 a practice that meets standards established by the department of human services. Those medical
22 assistance recipients who have third-party medical coverage or insurance may be exempt from
23 mandatory managed care in accordance with rules and regulations promulgated by the department
24 of human services. The department is further authorized to redesign benefit packages for medical
25 assistance beneficiaries subject to appropriate federal approval.

26 (c) The department is authorized to obtain any approval through waiver(s) and/or state
27 plan amendments, from the secretary of the United States department of health and human
28 services, that are necessary to implement mandatory managed health care delivery systems for all
29 medical assistance recipients, including the primary case management model in which ancillary
30 services are provided under the direction of a physician in a practice that meets standards
31 established by the department of human services. The waiver(s) and/or state plan amendments
32 shall include the authorization to exempt beneficiaries with third-party medical coverage or
33 insurance from mandatory managed care in accordance with rules and regulations promulgated by
34 the department of human services. ~~The department may also redesign benefit packages for~~

1 ~~medical assistance beneficiaries in accordance with rules and regulations promulgated by the~~
2 ~~department.~~

3 (d) To ensure the delivery of timely and appropriate services to persons who become
4 eligible for Medicaid by virtue of their eligibility for a U.S. social security administration
5 program, the department of human services is authorized to seek any and all data sharing
6 agreements or other agreements with the social security administration as may be necessary to
7 receive timely and accurate diagnostic data and clinical assessments. Such information shall be
8 used exclusively for the purpose of service planning, and shall be held and exchanged in
9 accordance with all applicable state and federal medical record confidentiality laws and
10 regulations.

11 ~~(e) The department of human services and/or the executive office of health and human~~
12 ~~services is authorized and directed to apply for and obtain any necessary waiver(s) and/or state~~
13 ~~plan amendments from the secretary of the United States department of health and human~~
14 ~~services, including, but not limited to, a waiver of the appropriate sections of law for the purpose~~
15 ~~of administering and implementing the goals of the Medicaid Reform Act 2008 as described in~~
16 ~~section 42-7.2-16 of the Rhode Island general laws, specifically using competitive value based~~
17 ~~purchasing to maximize the available service options and to promote accountability and~~
18 ~~transparency in the delivery of services for all Medical Assistance beneficiaries.~~

19 SECTION 4. Section 40-8-29 of the General Laws in Chapter 40-8 entitled "Medical
20 Assistance" is hereby amended to read as follows:

21 **40-8-29. Selective contracting.** -- (a) Notwithstanding any other provision of state law,
22 the department of human services is authorized to utilize selective contracting [with prior general](#)
23 [assembly approval](#) to assure that all service expenditures under this chapter have the maximum
24 benefit of competition, and afford Rhode Islanders the overall best value, optimal quality, and the
25 most cost-effective care possible.

26 (b) Any approved medical assistance provider who declines to participate in contracting
27 for benefits in any one of the department's medical assistance programs, including, but not limited
28 to any and all managed care programs, may be suspended as a participating provider and denied
29 participation in all state operated medical assistance programs at the discretion of the department.

30 SECTION 5. Section 40-8.9-9 of the General Laws in Chapter 40-8.9 entitled "Medical
31 Assistance - Long-Term Care Service and Finance Reform" is hereby amended to read as
32 follows:

33 **40-8.9-9. Long-term care re-balancing system reform goal.** -- (a) Notwithstanding any
34 other provision of state law, the department of human services is authorized and directed to apply

1 for and obtain any necessary waiver(s), waiver amendment(s) and/or state plan amendments from
2 the secretary of the United States department of health and human services, and to promulgate
3 rules necessary to adopt an affirmative plan of program design and implementation that addresses
4 the goal of allocating a minimum of fifty percent (50%) of Medicaid long-term care funding to
5 home and community-based care on or before December 31, 2012. The department is further
6 authorized and directed to prioritize investments in home and community-based care and to
7 maintain the integrity and financial viability of all current long-term care services while pursuing
8 this goal.

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

20 (c) Pursuant to federal authority procured under section 42-7.2-16 of the general laws,
21 the department of human services is directed and authorized to adopt a tiered set of criteria to be
22 used to determine eligibility for services. Such criteria shall be developed in collaboration with
23 the state's health and human services departments and shall encompass eligibility determinations
24 for services in nursing facilities, hospitals, and intermediate care facilities for the mentally
25 retarded as well as home and community-based alternatives, and shall provide a common
26 standard of income eligibility for both institutional and home and community-based care. The
27 department is, [subject to prior approval of the general assembly](#), authorized to adopt criteria for
28 admission to a nursing facility, hospital or intermediate care facility for the mentally retarded that
29 are more stringent than those employed for access to home and community-based services. The
30 department is also authorized to promulgate rules that define the frequency of re-assessments for
31 services provided for under this section. [Legislatively approved levels of care may be applied in
32 accordance with the following:](#)

33 [\(1\) Any Medicaid recipient deemed eligible for nursing facility, hospital, or intermediate
34 care facility for the mentally retarded as of December 31, 2008, shall continue, throughout that](#)

1 individual's life, to be assessed utilizing the level of care criteria in place for that care as of
2 December 31, 2008;

3 (2) Any Medicaid recipient deemed eligible for home and community services prior to
4 December 31, 2008, shall continue to be assessed for that care utilizing the level of care criteria in
5 place as of December 31, 2008;

6 (3) Persons meeting or who would have met the level of care criteria for nursing facility
7 care as of December 31, 2008, shall continue to be deemed to meet the institutional level of care
8 and shall only be transitioned to home and community services on a voluntary basis, and shall not
9 be subject to any wait list for home and community services; and

10 (4) No resident of a nursing facility, hospital, or intermediate care facility for the
11 mentally retarded shall be removed involuntarily from said facility even if the condition of the
12 resident improves.

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

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

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

30 (1) A prospective base adjustment effective, not later than July 1, 2008, across all
31 departments and programs, of ten percent (10%) of the existing standard or average rate,
32 contingent upon a demonstrated increase in the state-funded or Medicaid caseload by June 30,
33 2009;

34 (2) Development, not later than September 30, 2008, of certification standards

1 supporting and defining targeted rate increments to encourage service specialization and
2 scheduling accommodations including, but not limited to, medication and pain management,
3 wound management, certified Alzheimer's Syndrome treatment and support programs, and shift
4 differentials for night and week-end services; and

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

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

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

18 SECTION 6. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO CENTERS FOR MEDICARE AND MEDICAID SERVICES WAIVER AND
EXPENDITURE AUTHORITY

1 This act would authorize the implementation of the Rhode Island Global Consumer
2 Choice Compact Demonstration subject to various restrictions that would require prior general
3 assembly approval.

4 This act would take effect upon passage.

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