

**2009 -- H 5112 SUBSTITUTE A AS AMENDED**

LC00633/SUB A/3

**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 sections:

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 global  
5 consumer choice section 1115 demonstration ("the demonstration"), project number 11W-  
6 00242/1, subject to the 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 **42-12.4-9. Demonstration implementation taskforce.** -- (a) Purpose. The general  
3 assembly is committed to a public participatory process to implement Medicaid reform through  
4 the demonstration. To assure such a process, following final acceptance of the demonstration by  
5 the state, the executive office of health and human service and the department of human services  
6 shall establish a demonstration implementation taskforce. The taskforce shall work  
7 collaboratively with the executive office of health and human services and the department of  
8 human services to plan, design, and implement changes to the Medicaid program under the  
9 demonstration and to evaluate the impact of such changes and of the demonstration.

10 (b) Chair. The taskforce shall be co-chaired by a senior state official of EOHHS/DHS and  
11 a member of the community who is knowledgeable about the Medicaid program and the  
12 populations and services it funds in Rhode Island as well as with the provisions of the  
13 demonstration.

14 (c) Taskforce composition. There are distinct populations that receive services funded  
15 through the Medicaid program including: children and youth with special health care needs,  
16 adults and children with developmental disabilities, adults with serious and persistent mental  
17 illness and/or addiction disorders and children with severe emotional disturbance, adults with  
18 disabilities, adults age sixty-five (65) and older and low-income children and families. It is the  
19 intent of the general assembly that the taskforce includes members who are knowledgeable about  
20 the needs of these populations and the services currently provided to them.

21 Members of the taskforce shall be appointed by director of the department of human  
22 services. The membership shall include: for each distinct population two (2) consumers or family  
23 members of consumers, one member of an advocacy organization and one member of a policy  
24 organization; a representative from organizations that either provide or represent entities that  
25 provide services to Medicaid beneficiaries including, but not limited to, health plans, hospitals  
26 community health centers, community mental health organizations, licensed substance abuse  
27 treatment providers, licensed health care practitioners, nursing facilities, and home and  
28 community-based service providers.

29 Total membership shall not exceed forty-five (45) individuals. The executive office of  
30 health and human services/department of human services shall provide necessary staff support to  
31 effectively operate the taskforce.

32 (d) Duration. The taskforce shall remain in effect so long as the demonstration is in  
33 effect.

34 (e) Meeting frequency and relationship to the permanent joint committee of the

1 demonstration compact:

2 The taskforce shall meet no less than monthly and shall report on its activities to the  
3 permanent joint committee of the demonstration compact established pursuant to section 42-12.4-

4 5. Permanent joint committee shall appoint a member to serve as a liaison to the taskforce.

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

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

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

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

34 ~~(d) All children and families receiving Medical Assistance under title 40 of the Rhode~~

1 ~~Island general laws shall also be subject to co-payments for certain medical services as approved~~  
2 ~~in the waiver and/or the applicable state plan amendment, and in accordance with rules and~~  
3 ~~regulations promulgated by the department.~~

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

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

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

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

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

29 (c) The department is authorized to obtain any approval through waiver(s) and/or state  
30 plan amendments, from the secretary of the United States department of health and human  
31 services, that are necessary to implement mandatory managed health care delivery systems for all  
32 medical assistance recipients, including the primary case management model in which ancillary  
33 services are provided under the direction of a physician in a practice that meets standards  
34 established by the department of human services. The waiver(s) and/or state plan amendments

1 shall include the authorization to exempt beneficiaries with third-party medical coverage or  
2 insurance from mandatory managed care in accordance with rules and regulations promulgated by  
3 the department of human services. ~~The department may also redesign benefit packages for  
4 medical assistance beneficiaries in accordance with rules and regulations promulgated by the  
5 department.~~

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

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

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

24 **40-8-29. Selective contracting.** – (a) Notwithstanding any other provision of state law,  
25 the department of human services is authorized to utilize selective contracting with prior general  
26 assembly approval to assure that all service expenditures under this chapter have the maximum  
27 benefit of competition, and afford Rhode Islanders the overall best value, optimal quality, and the  
28 most cost-effective care possible. Beneficiaries will be limited to using the services/products of  
29 only those providers determined in a competitive bidding process to meet the standards for best  
30 quality, performance and price set by the department in accordance with applicable federal and  
31 state laws.

32 ~~(b) Any approved medical assistance provider who declines to participate in contracting  
33 for benefits in any one of the department's medical assistance programs, including, but not limited  
34 to any and all managed care programs, may be suspended as a participating provider and denied~~

1 ~~participation in all state operated medical assistance programs at the discretion of the department.~~

2 (b) For purposes of this section "selective contracting" shall mean the process for  
3 choosing providers to serve Medicaid beneficiaries based on their ability to deliver the best  
4 quality products or services, at the best value or price.

5 (c) To ensure all services allowable for Medicare reimbursement for beneficiaries who  
6 are dually eligible, selective contractors must be willing and able to accept Medicare.

7 SECTION 5. Chapter 40-8 of the General Laws entitled "Medical Assistance" is hereby  
8 amended by adding thereto the following section:

9 **40-8-30. Suspension of participating providers.** -- Any approved medical assistance  
10 provider who declines to participate in contracting for benefits in any one of the department's  
11 medical assistance programs, including, but not limited to, any and all managed care programs,  
12 may be suspended as a participating provider and denied participation in all state operated  
13 medical assistance programs at the discretion of the department. Prior to suspension, a  
14 participating provider shall have the right to appeal such suspension to a state administrative  
15 hearing officer, in accordance with the rules of the department of human services.

16 SECTION 6. Section 40-8.9-9 of the General Laws in Chapter 40-8.9 entitled "Medical  
17 Assistance - Long-Term Care Service and Finance Reform" is hereby amended to read as  
18 follows:

19 **40-8.9-9. Long-term care re-balancing system reform goal.** -- (a) Notwithstanding any  
20 other provision of state law, the department of human services is authorized and directed to apply  
21 for and obtain any necessary waiver(s), waiver amendment(s) and/or state plan amendments from  
22 the secretary of the United States department of health and human services, and to promulgate  
23 rules necessary to adopt an affirmative plan of program design and implementation that addresses  
24 the goal of allocating a minimum of fifty percent (50%) of Medicaid long-term care funding for  
25 persons aged sixty-five (65) and over and adults with disabilities in addition to services for  
26 persons with developmental disabilities and mental disabilities to home and community-based  
27 care on or before December 31, ~~2012~~ 2013; provided, further, the executive office of health and  
28 human services shall report annually as part of its budget submission, the percentage distribution  
29 between institutional care and home and community-based care by population and shall report  
30 current and projected waiting lists for long-term care and home and community-based care  
31 services. The department is further authorized and directed to prioritize investments in home and  
32 community-based care and to maintain the integrity and financial viability of all current long-  
33 term care services while pursuing this goal.

34 (b) The long-term care re-balancing goal is person-centered and encourages individual

1 self-determination, family involvement, interagency collaboration, and individual choice through  
2 the provision of highly specialized and individually tailored home-based services. Additionally,  
3 individuals with severe behavioral, physical, or developmental disabilities must have the  
4 opportunity to live safe and healthful lives through access to a wide range of supportive services  
5 in an array of community-based settings, regardless of the complexity of their medical condition,  
6 the severity of their disability, or the challenges of their behavior. Delivery of services and  
7 supports in less costly and less restrictive community settings, will enable children, adolescents  
8 and adults to be able to curtail, delay or avoid lengthy stays in residential treatment facilities,  
9 juvenile detention centers, psychiatric facilities, and/or intermediate care or skilled nursing  
10 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 shall encompass eligibility determinations  
15 for services in nursing facilities, hospitals, and intermediate care facilities for the mentally  
16 retarded as well as home and community-based alternatives, and shall provide a common  
17 standard of income eligibility for both institutional and home and community-based care. The  
18 department is, subject to prior approval of the general assembly, authorized to adopt criteria for  
19 admission to a nursing facility, hospital, or intermediate care facility for the mentally retarded that  
20 are more stringent than those employed for access to home and community-based services. The  
21 department is also authorized to promulgate rules that define the frequency of re-assessments for  
22 services provided for under this section. Legislatively approved levels of care may be applied in  
23 accordance with the following:

24 (1) Any Medicaid recipient deemed eligible for nursing facility, hospital, or intermediate  
25 care facility for the mentally retarded as of January 15, 2009, shall continue, throughout that  
26 individual's life, to be assessed utilizing the level of care criteria in place for that care as of  
27 January 15, 2009;

28 (2) Any Medicaid recipient deemed eligible for home and community services prior to  
29 January 15, 2009, shall continue to be assessed for that care utilizing the level of care criteria in  
30 place as of January 15, 2009;

31 (3) Persons meeting or who would have met the level of care criteria for nursing facility  
32 care as of January 15, 2009, shall continue to be deemed to meet the institutional level of care and  
33 shall only be transitioned to home and community services on a voluntary basis, and shall not be  
34 subject to any wait list for home and community services; and

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

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

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

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

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

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

33           (2) Development, not later than September 30, 2008, of certification standards  
34 supporting and defining targeted rate increments to encourage service specialization and

1 scheduling accommodations including, but not limited to, medication and pain management,  
2 wound management, certified Alzheimer's Syndrome treatment and support programs, and shift  
3 differentials for night and week-end services; and

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

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

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

17 SECTION 7. This act shall take effect upon passage.

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LC00633/SUB A/3  
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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

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- 1           This act would authorize the implementation of the Global Consumer Choice
- 2   Demonstration subject to various restrictions that would require prior general assembly approval.
- 3           This act would take effect upon passage.

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LC00633/SUB A/3  
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