

2012 -- H 7035

=====  
LC00221  
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

—————  
A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND  
HOSPITALS - RIGHTS FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

Introduced By: Representatives Guthrie, Bennett, O`Grady, Johnston, and Phillips

Date Introduced: January 05, 2012

Referred To: House Finance

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 40.1-11-4.3 of the General Laws in Chapter 40.1-11 entitled  
2 "Division of Developmental Disabilities" is hereby amended to read as follows:

3           **40.1-21-4.3. Definitions.** -- As used in this chapter and in chapter 22 of this title the  
4 words:

5           (1) "Ancillary services" means those services provided, and shall include, but not be  
6 limited to, transportation, housing, housing adaptation, personal attendant care, and homemaker  
7 services.

8           (2) "Case management" means the implementation of an individual's program by  
9 providing information, by referral to appropriate service providers, by procurement of services,  
10 and by the coordination of the necessary services.

11           (3) "Department" means the Rhode Island department of mental health, retardation, and  
12 hospitals.

13           (4) "Developmental services" means those services provided to developmentally  
14 disabled adults, and shall include, but not be limited to, habilitation and rehabilitation services,  
15 and day services.

16           (5) "Developmentally disabled adult" means a person, eighteen (18) years old or older  
17 and not under the jurisdiction of the department of children, youth, and families who is either a  
18 mentally retarded developmentally disabled adult or is a person with a severe, chronic disability

1 which:

2 (i) Is attributable to a mental or physical impairment or combination of mental and  
3 physical impairments;

4 (ii) Is manifested before the person attains age twenty-two (22);

5 (iii) Is likely to continue indefinitely;

6 (iv) Results in substantial functional limitations in three (3) or more of the following  
7 areas of major life activity:

8 (A) Self care,

9 (B) Receptive and expressive language,

10 (C) Learning,

11 (D) Mobility,

12 (E) Self-direction,

13 (F) Capacity for independent living,

14 (G) Economic self-sufficiency; and

15 (v) Reflects the person's need for a combination and sequence of special,  
16 interdisciplinary, or generic care, treatment, or other services, which are of lifelong or extended  
17 duration and are individually planned and coordinated. For purposes of funding, it is understood  
18 that students enrolled in school will continue to receive education from their local education  
19 authority in accordance with section 16-24-1 et seq.

20 (6) "Diagnosis and evaluation" means a process to determine whether and to what extent  
21 an individual is developmentally disabled and a study of the individual's condition, situation, and  
22 needs which lead to a recommendation of what services, if any, would benefit the individual.

23 (7) "Individualized program plan" or "general service plan" means a plan, however  
24 named, which includes, but shall not be limited to, the following:

25 (i) An evaluation of the strengths, difficulties, needs, and goals of the individual;

26 (ii) A description of those services found to be necessary or appropriate to assist the  
27 individual in realizing his or her potential for self-sufficiency in major life activities;

28 (iii) A description of the agencies and/or individuals, which are proposed to provide each  
29 of the recommended services;

30 (iv) The intermediate and long-range objectives for the individual's development and  
31 habilitation;

32 (v) The expected duration for the provision of the services;

33 (vi) A description of the tests and other evaluative devices used and their results;

34 (vii) Proposed criteria for monitoring and evaluating the success of the services in

1 meeting the individual's needs; and

2 (viii) The signatures of the preparers of the plan and the date.

3 The individual program plan shall indicate developmental, supportive, or ancillary  
4 services by function and frequency, the manner of subsidy and delivery and the categories of need  
5 for services such as transportation, job training, or occupation, housing, housing adaptation,  
6 personal attendant care, homemaker, or other services. This plan shall be reviewed at least  
7 annually; provided, however, that authorizations for services and funding issued prior to July 1,  
8 2011 are null and void. Authorizations will be paid at the rate effective in the quarter the service  
9 was provided; provided, further, that the authorized rates for the period of October 1, 2011 to  
10 December 31, 2011, shall be the same as the rates in effect for the period of July 1, 2011 to  
11 September 30, 2011.

12 (8) "Mentally retarded developmentally disabled adult" means a person eighteen (18)  
13 years old or older and not under the jurisdiction of the department of children, youth, and  
14 families, with significant sub-average, general intellectual functioning two (2) standard deviations  
15 below the norm, existing concurrently with deficits in adaptive behavior and manifested during  
16 the developmental period. For purposes of funding, it is understood that students enrolled in  
17 school will continue to receive education from their local education authority in accordance with  
18 section 16-24-1 et seq.

19 (9) "Service broker" means that individual who assists in facilitating the connection  
20 between the developmentally disabled person and the services required by the individual program  
21 plan.

22 (10) "Subsidized access to service" means the provisions of financial resources through  
23 vouchers to a developmentally disabled person to enable the person to gain access to appropriate  
24 generic and/or special services as required by the individual program plan.

25 (11) "Supportive services" means those services provided to developmentally disabled  
26 adults, and shall include, but not be limited to, occupational therapy, physical therapy,  
27 psychological services, counseling, nursing services, and medical services.

28 SECTION 2. Section 40.1-26-2 of the General Laws in Chapter 40.1-26 entitled "Rights  
29 for Persons with Developmental Disabilities" is hereby amended to read as follows:

30 **40.1-26-2. Definitions.** -- As used in this chapter:

31 (1) "Advocate" means: (i) a legal guardian; or (ii) an individual acting on behalf of a  
32 person with a developmental disability in a manner clearly consistent with the interests of the  
33 person with a developmental disability and includes a family member, friend, or professional  
34 advocate. Whenever possible an advocate should be selected by the person with a disability.

1           (2) "Agency" means any person or organization which provides day program services,  
2 residential services, support services or advocacy services for persons with developmental  
3 disabilities, and which is licensed by the department of mental health, retardation, and hospitals  
4 pursuant to section 40.1-24-1 et seq.

5           (3) "Applicant" means any person with a developmental disability who has applied for  
6 services from the division of developmental disabilities and/or any agency licensed by the  
7 department of mental health, retardation, and hospitals pursuant to section 40.1-24-1 et seq.

8           (4) "Aversive interventions" means a class of stimuli that are followed by escape or  
9 avoidance response.

10          (5) "Behavioral Treatment Intervention" means any intervention or treatment to develop  
11 or strengthen adaptive appropriate behaviors through the application of behavioral interventions  
12 and to simultaneously reduce the frequency of maladaptive or inappropriate behaviors. Behavior  
13 interventions encompass interventions, which refer to purposeful, clinical manipulation of  
14 behavior.

15          (6) "Competent" means the ability to understand the likely risks and benefits of a  
16 procedure or plan when the risks and benefits are presented to the participant in a manner most  
17 likely to be understood by the participant in light of his or her cognitive abilities and learning  
18 style.

19          (7) "Department" means the department of mental health, retardation, and hospitals.

20          (8) "Developmental disability" means a severe chronic disability which is attributable to  
21 a mental or physical impairment or combination of impairments; is manifested before the person  
22 attains age twenty-two (22); is likely to continue indefinitely; results in substantial functional  
23 limitations in three (3) or more of the following areas of major life activity: self-care, receptive  
24 and expressive language, learning, mobility, self-direction, capacity for independent living,  
25 economic self-sufficiency; and reflects the person's need for a combination and sequence of  
26 special, interdisciplinary or generic care, treatment, or other services which are of life long or  
27 extended duration and are individually planned and coordinated.

28          (9) "Individualized plan" means the personalized document which describes an  
29 individualized profile of the participant highlighting his or her capabilities, preferences and  
30 interests. The plan describes specific supports in the areas of vocational, social, medical,  
31 supported living, and rehabilitation required to meet the specific needs of the participant. The  
32 plan includes quality indicators that demonstrate the plan has met the expectations of the  
33 participant and the participant is satisfied with the support services he or she is receiving;  
34 provided, however, that authorizations for services and funding issued prior to July 1, 2011 are

1 null and void. Authorizations for services will be paid at the rate effective when in the quarter the  
2 service was provided; provided, further, that the authorized rates for the period of October 1,  
3 2011 to December 31, 2011, shall be the same as the rates in effect for the period of July 1, 2011  
4 to September 30, 2011.

5 (10) "Participant" means any person eighteen (18) years or older, with a developmental  
6 disability who receives services from the division of developmental disabilities and/or an agency  
7 licensed by the department of mental health, retardation, and hospitals.

8 (11) "Relative" means a member of the participant's or applicant's family who has been  
9 actively involved in the participant's or applicant's life, has an ongoing relationship with the  
10 participant or applicant, and is supportive in a manner clearly consistent with the best interests of  
11 the participant or applicant.

12 (12) "Seclusion" means placing a participant alone in a locked room without supervision.

13 (13) "Serious incidents" means any situation involving a person with developmental  
14 disabilities in which the person:

15 (i) Has sustained an injury, which requires medical care or treatment beyond routine first  
16 aid;

17 (ii) Has been missing;

18 (iii) Has died;

19 (iv) Has been involved in a criminal act;

20 (v) Has been subject to a medication error.

21 SECTION 3. Section 40-6-27 of the General Laws in Chapter 40-6 entitled "Public  
22 Assistance Act" is hereby amended to read as follows:

23 **40-6-27. Supplemental security income.** -- (a) (1) The director of the department is  
24 hereby authorized to enter into agreements on behalf of the state with the secretary of the  
25 Department of Health and Human Services or other appropriate federal officials, under the  
26 supplementary and security income (SSI) program established by title XVI of the Social Security  
27 Act, 42 U.S.C. section 1381 et seq., concerning the administration and determination of eligibility  
28 for SSI benefits for residents of this state, except as otherwise provided in this section. The state's  
29 monthly share of supplementary assistance to the supplementary security income program  
30 ~~effective January 1, 2009~~, shall be as follows:

31 (i) Individual living alone: \$39.92

32 (ii) Individual living with others: \$51.92

33 (iii) Couple living alone: \$79.38

34 (iv) Couple living with others: \$97.30

1 (v) Individual living in state licensed assisted living residence: ~~\$332.00~~ \$538.00

2 (vi) Individual living in state licensed supportive residential care settings that, depending  
3 on the population served, meet the standards set by the department of human services in  
4 conjunction with the department(s) of children, youth and families, elderly affairs and/or ~~mental~~  
5 ~~health, retardation and hospitals~~ behavioral healthcare, developmental disabilities and hospitals;  
6 \$300.00.

7 Provided, however, that the department of human services shall by regulation reduce,  
8 effective January 1, 2009, the state's monthly share of supplementary assistance to the  
9 supplementary security income program for each of the above listed payment levels, by the same  
10 value as the annual federal cost of living adjustment to be published by the federal social security  
11 administration in October 2008 and becoming effective on January 1, 2009, as determined under  
12 the provisions of title XVI of the federal social security act [42 U.S.C. section 1381 et seq.] and  
13 provided further, that it is the intent of the general assembly that the January 1, 2009 reduction in  
14 the state's monthly share shall not cause a reduction in the combined federal and state payment  
15 level for each category of recipients in effect in the month of December 2008; provided further,  
16 that the department of human services is authorized and directed to provide for payments to  
17 recipients in accordance with the above directives ~~beginning January 1, 2009~~.

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

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

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

27 (5) To ensure that supportive residential care or an assisted living residence is a safe and  
28 appropriate service setting, the department is authorized and directed to make a determination of  
29 the medical need and whether a setting provides the appropriate services for those persons who:  
30 (i) Have applied for or are receiving SSI, and who apply for admission to supportive residential  
31 care setting and assisted living residences on or after October 1, 1998; or (ii) Who are residing in  
32 supportive residential care settings and assisted living residences, and who apply for or begin to  
33 receive SSI on or after October 1, 1998.

34 (6) The process for determining medical need required by subsection (4) of this section

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

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

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

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

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

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

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

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

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

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

33 SECTION 4. There is hereby appropriated, out of any money in the treasury not  
34 otherwise appropriated for the fiscal year 2011-2012, the sum of \$15,000,000 for services for the

1 developmentally disabled at the rates and amounts provided for in this act, and the state controller  
2 is hereby authorized and directed to draw his or her orders upon the general treasurer for payment  
3 of said sum, or so much thereof as may be from time to time required, upon receipt by him or her  
4 of properly authenticated vouchers in accordance with the rates and amounts provided for in this  
5 act.

6 SECTION 5. This act shall take effect upon passage.

7

=====  
LC00221  
=====



EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND  
HOSPITALS - RIGHTS FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

\*\*\*

- 1           This act would restore the budget cut made to the developmental disabilities assisted
- 2 living fund.
- 3           This act would take effect upon passage.

=====  
LC00221  
=====