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TITLE 218 – DEPARTMENT OF HUMAN SERVICES

CHAPTER 40 – DIVISION OF ELDERLY AFFAIRS

SUBCHAPTER 00 – N/A

PART 4 – RULES, REGULATIONS, AND STANDARDS GOVERNING THE HOME AND COMMUNITY CARE SERVICES TO THE ELDERLY PROGRAM

4.1 Introduction

4.1.1 Preface

- A. These Rules, Regulations and standards supersede any and all prior Rules, Regulations, and standards relating to the creation and provision of home and community care services to the elderly promulgated pursuant to R.I. Gen Laws § 42-66.3-1 *et. seq.* They have been promulgated to ensure that basic information about the nature of available services, eligibility to receive these services, and the role and composition of the Home and Community Care Advisory Committee is readily available to qualified service recipients and their families.
- B. Pursuant to the provisions of the Administrative Procedures Act, R.I. Gen Laws § 42-35-3, the following were given consideration in arriving at the Regulations:
1. Alternative approaches to the Regulations; and
 2. Duplication or overlap with other State Regulations.
 3. No alternative approach was identified; nor any duplication or overlap.

4.1.2 Program Authority

The At Home Support and Community Care Services to the Elderly Program, hereinafter referred to as “the Program,” is authorized by, and these Regulations are promulgated under, the authority contained in R.I. Gen. Laws § 42-66.3-1 *et. seq.*, “Home and Community Care Services to the Elderly,” as amended.

4.1.3 Nondiscrimination and Civil Rights Policy

Each agency providing At Home Support Program ~~home and community care services and support to the elderly~~ shall be responsible for maintaining a policy of nondiscrimination in the provision of services to participants and in the employment of staff without regard to race, color, creed, national origin, sex, sexual orientation, age, handicapping condition or degree of handicap, in

accordance with all applicable State and Federal statutes, Regulations, and local ordinances.

4.1.4 Severability

If any provision of the Rules and Regulations herein or the application thereof to any program or circumstances shall be held invalid, such invalidity shall not affect the provision or application of the Rules and Regulations which can be given effect, and to this end the provisions of the Rules and Regulations are declared to be severable.

4.1.5 Definitions

A. For the purpose of these Rules and Regulations, the following words and phrases shall mean:

1. "Activities of daily living" or "ADLs" means everyday routines generally involving functional mobility and personal care, including but not limited to, bathing, dressing, grooming, eating, toileting, mobility and transfer.
42. "Adult day services program" means an agency licensed through the Rhode Island Department of Health that provides a comprehensive supervised program on a regular basis to address the biological, psychological and social needs of adults for a substantial part of a day in a single physical location for a specified number of participants daily. Adult day services may include, medical supervision, social and educational activities, snacks and/or hot lunch.
3. "Alzheimer's disease" is a specific brain disease and is the most common cause of dementia, accounting for sixty (60%) to eighty (80%) percent of dementia cases.
42. "Assisted living residence" means a publicly or privately operated residence that is licensed pursuant to R.I. Gen. Laws § 23-17.4, as amended.
53. "Case management ~~agency~~" means service provided by a community-based agency designated by the ~~Division Office of Healthy Aging to provide care coordination for home and community care clients that facilitates access to and coordinates the various services available to meet, maintain and improve the functional level and independence of the client.~~
64. "Cost share" means the assigned client contribution to the cost of services. As used herein, "cost share" shall have the same meaning as "copay."

7. "Dementia" is used to describe a group of symptoms that affects memory, thinking and behavior. Symptoms eventually grow severe enough to interfere with daily tasks.
- ~~5. "Division" means the Rhode Island Department of Human Services, Division of Elderly Affairs.~~
86. "Director" means the Director of the Rhode Island ~~Division of Elderly Affairs~~ Office of Healthy Aging.
97. "Federal poverty level" or "FPL" means the Federal poverty guidelines that are issued each year in the Federal Register by the U.S. Department of Health and Human Services and that are used for administrative purposes, such as determining eligibility for certain Federal programs. For purposes of these Regulations, a percentage of the FPL is used to determine eligibility for the Program.
10. "Functional assessment" is a tool used to collect information on an individual's health conditions and functional needs. This tool may be used to develop a plan of care for specific services that an individual may receive upon being determined eligible.
11. "Functional impairments" means a physical, mental, social or cognitive condition or deficit that restricts an individual's ability to perform the tasks and activities of daily living and that impedes the individual's capability for self-care and independent living without assistance or supervision from others on a recurring or continuous basis for extended periods of time.
- ~~8. "Home and community care services" means arranging for, or providing directly to the client, or providing through contract services, such as home health aide/homemaker services, and such other services that may be required for a client to remain in the community and as may be promulgated by Division regulations.~~
12. "Home and community based services" or "HCBS" means a set of services delivered in the home or a community-based setting, that address the needs of people with functional limitations who need help with daily living activities in order to remain living at home.
139. "Home care agency" means any agency licensed by the Department of Health as a "home nursing care provider" and/or "home care provider" under the provisions of R.I. Gen. Laws Chapter 23-17, as amended.
- ~~10. "Home health aide services" means simple health care tasks, personal hygiene services, housekeeping tasks essential to the patient's health, and other related supportive services. These services shall be in accordance with a plan of treatment for the patient and shall be under the supervision of the appropriate health care professional. These services~~

~~shall be provided by a person who meets the standards established by the Department of Health.~~

1411. ~~“Functional impairment~~Homebound” means the condition of the client is such that the client does not have the normal ability to leave home, consequently leaving the home requires a considerable and taxing effort by the client. A client does not have to be confined to bed to be homebound.
1512. ~~“Homemaker services” means assistance and instruction in managing and maintaining a household, and incidental household tasks for persons at home because of illness, incapacity, or the absence of a caretaker relative. These services shall be provided by a person who meets the standards established by the Department of Health~~ the performance of general household tasks (e.g. meal preparation and routine household care) provided by a qualified homemaker, who is employed by a licensed home care agency, when the beneficiary or caretaker regularly responsible for these activities is temporarily absent or unable to manage the home and care for him or herself or others in the home.
1613. ~~“Income” means the sum of Federal adjusted gross income as defined in the Internal Revenue Code of the United States, and all non-taxable income including, but not limited to reported to the Internal Revenue Service (IRS) for the prior year of application or the sum of the following income from the prior year:~~
- ~~a. —~~ a. Salary, wages, bonuses, commissions, income from self-employment, interest, dividends, capital gains, alimony, net rental income, pensions and annuities; and
 - ~~b. —~~ b. Gross Social Security income, gross retirement, Veteran's disability pensions or benefits, capital gains not reported above, cash Public Assistance, support payments, Unemployment Insurance, and other non-taxable income/interest.
 - ~~a. —~~ a. — The amount of capital gains excluded from adjusted gross income;
 - ~~b. —~~ b. — Support money;
 - ~~c. —~~ c. — Alimony;
 - ~~d. —~~ d. — Non-taxable strike benefits;
 - ~~e. —~~ e. — Cash public assistance and relief not including relief granted pursuant to applicable statutes;
 - ~~f. —~~ f. — the gross amount of any pension or annuity (including railroad retirement act benefits, all payments received under the federal

~~Social Security Act, state unemployment insurance laws, and veterans' disability pensions);~~

~~g. Non-taxable interest received from the federal government or any of its instrumentalities; workers' compensation;~~

~~h. The gross amount of "loss of time" insurance.~~

ci. "Income", as used herein, shall not include:

- (1) Gifts from non-government sources;
- (2) Surplus foods;
- (3) Other relief in kind supplied by a public or private agency;
- (4) Sums of money expended for medical and pharmaceutical needs that exceed three percent (3%) of applicant's annual income or three percent (3%) of applicant's preceding ninety (90) day income computed on an annual basis.

1744. "Long-term care ombudsperson" means the person or persons designated by the Rhode Island Office of Healthy Aging Director for the purpose of advocating on behalf of recipients of long-term care services and of receiving, investigating and resolving through mediation, negotiation and administrative action complaints filed by recipients of long-term care services; individuals acting on their behalf or any individual organization or government agency that has reason to believe that a long-term care agency has engaged in activities, practices or omissions that constitute a violation of applicable statutes or regulations or that may have an adverse effect upon the health, safety, welfare, rights or the quality of life of recipients of long-term care services.

18. "Long term services and supports" or "LTSS" means a variety of health, health-related and social services that assist individuals with functional limitations due to physical, cognitive or mental conditions, or disabilities. LTSS includes assistance with Activities of Daily Living (ADL's such as eating, bathing and dressing) and Instrumental Activities of Daily Living (IADL's such as housekeeping and shopping over an extended period of time).

19. "Medical expenses" means allowable medical expenses that exceed three percent (3%) of an individual's annual income. The expenses may be applied against the individual's total income in the determination for program eligibility if an individual's income is above the income standard. Medical expenses include, but are not limited to:

a. Physicians, dentist, and other health care professional visits;

- b. Health insurance premiums, co-pays, co-insurance, and deductibles;
- c. Vision care costs;
- d. Prescription medications;
- e. Medical tests and x-rays;
- f. Acute hospital and nursing care services;
- g. Home nursing care such as personal care attendants, private duty nursing and home health aides;
- h. Audiologist service and hearing aides;
- i. Dentures;
- j. Durable medical equipment such as wheelchairs and protective shields;
- k. Therapies such as speech, physical or occupational;
- l. Transportation for medical care such as care, taxi, bus, or ambulance; and
- m. Long Term Services and Supports (LTSS) expenses at home or in a health care institution at the State Medicaid reimbursement rate.

20. "Office" means the Rhode Island Office of Healthy Aging.

21. "Person-centered options counseling" means an interactive decision-support process involving individuals and their family members, caregivers and/or significant others that assist them in the understanding of the LTSS choices that best serve their own goals and preferences, needs and strengths, and unique values and circumstances.

22. "Personal care" means a range of services and supports that enables HCBS beneficiaries to accomplish tasks that they would normally do for themselves if they did not have functional and/or clinical limitations. Personal care may take the form of hands-on assistance or cuing to prompt the beneficiary to perform a task. The services may be provided on an episodic or on a continuing basis and may be provided by a home health aide, personal care attendant, or direct service worker.

2315. "Respite care services" means temporary care given inside or outside the home of a client who cannot entirely care for him/herself and thereby offers relief to caregivers.

24. "Spouse" means a person who is legally married to another.

2516. "The Program", as used herein, means the At Home Support~~Home and Community Care Services for the Elderly~~ Program.

4.2 Purpose and Services Available

4.2.1 Purpose

The purpose of the Program is to provide eligible ~~seniors with~~ individuals innovative options to help them remain in the community and avoid premature institutionalization.

4.2.2 Services Available

A. ~~Home and community care services~~The Program shall consist of:

1. Medicaid home and community based services for Medicaid eligible clients; or
2. ~~for the state funded co-payment~~At Home Cost-Share program, ~~care coordination, which consists of case management,~~ a combination of homemaker/personal care services, adult day care services and other support services deemed necessary by the Director.

4.3 Client Eligibility and Financial Participation by Clients

4.3.1 Medicaid Home and Community Based Services ~~Client Eligibility~~

A. To be eligible for ~~this the~~ Program, the client must be determined, through a functional assessment, to ~~be in~~ need ~~of~~ assistance with activities of daily living and/or to meet an institutional level of care and must meet the following criteria:

1. Medicaid eligible residents of the ~~s~~State who are age sixty-five (65) or older ~~and who meet the financial guidelines of the Overview of Medicaid Integrated Care Coverage, 210-RICR-40-00-1;~~ and
2. ~~Eligibility~~Eligible for the Rhode Island Medicaid Program ~~is~~as determined by the Department of Human Services. Applicants must also be assessed and determined to be in need of the assistance provided by the Program.

4.3.2 ~~Copay~~ClientAt Home Cost-Share Program Eligibility

~~A. Persons eligible for assistance under the provision of this section, subject to the annual appropriations deemed necessary by the General Assembly to carry out the provisions of this rule, include:~~

- ~~1. any homebound unmarried resident or homebound married resident of the state living separate and apart, who is at least sixty-five (65) years of age, ineligible for Medicaid, and whose income does not exceed two hundred percent (200%) of the federal poverty limit; and~~
- ~~2. any married resident of the state who is at least sixty-five (65) years of age, ineligible for Medicaid, and whose income when combined with any income of that person's spouse does not exceed two hundred percent (200%) of the federal poverty limit.~~

A. The Program group and eligibility requirements are determined by the State as follows:

1. Single adults – a single adult requesting the Program, is treated as an individual that is a group of one (1).
2. All single adults must meet the following eligibility requirements:
 - a. A Rhode Island resident;
 - b. Sixty-five (65) years of age, or age nineteen (19) to sixty-four (64) with a medically documented diagnosis of Alzheimer's Disease or other underlying related cause of dementia;
 - c. Ineligible for Medicaid; and
 - d. Income does not exceed two hundred fifty percent (250%) of the FPL.
3. Adults with spouses – when two (2) spouses are living together, both the person requesting the Program and the applicant's spouse are considered members of the applicants Program group (as a "couple" or group of two (2)) unless one (1) of the exceptions specified below applies:
 - a. Living together – a couple is considered living together in any of the following circumstances:
 - (1) Until the first (1st) day of the month following the calendar month of death or marriage separation (when a spouse dies or the couple separates); or
 - (2) When the number of days one (1) spouse is expected to receive LTSS in an institution is fewer than thirty (30) days.
 - b. Exceptions – adult applicants with spouses are treated as an "individual" for eligibility purposes in the following circumstance:

(1) When one (1) spouse in a couple is receiving LTSS in an institution.

4. All adults with spouses must meet the following eligibility requirements:

a. A Rhode Island resident;

b. Sixty five (65) years of age, or age nineteen (19) to sixty-four (64) with a medically documented diagnosis of Alzheimer's Disease or other underlying related cause of dementia;

c. Ineligible for Medicaid; and

d. Income does not exceed two hundred fifty percent (250%) of the FPL.

B. Availability of services under the ~~Copay~~ Program shall be dependent upon appropriation of funds by the Rhode Island General Assembly. Persons meeting the eligibility requirements of § 4.3.2(A) of this Part shall be eligible for the ~~co-cost share~~ payment portion of the Program.

4.3.3 Financial Participation by Clients

A. Medicaid Home and Community Based Services Program

1. ~~Client share of cost for those eligible for Rhode Island Medical Assistance Medicaid Program shall be set determined~~ by the Department of Human Services.

B. ~~Copay~~ At Home Cost Share Program

1. ~~Clients determined eligible under § 4.3 of this Part shall be assigned a cost share based on their income level and their selected services need. All client payments under this Program shall be paid directly to a vendor(s) of service(s) Clients are responsible to pay their cost share directly to the vendor/service provider.~~

C. Income Guidelines ~~and of the At Home Cost Shares for Co-pay (CNOM)~~ Program are determined by the ~~Division Office~~ according to the ~~F~~ederal poverty limit (FPL).

1. Program income ~~eligibility~~ guidelines will be adjusted ~~every year~~ annually when new FPL guidelines are issued. The Director has the authority to adjust cost share amounts up to a maximum of the amounts cited below:

a. Level One (1)

(1) Individual: up to one hundred twenty-five percent (125%) FPL for individuals

- (2) Home Care Cost Share: four dollars and fifty cents per hour (\$4.50/hour)
- (3) Couple: up to ~~one hundred twenty-five percent (200)~~125% FPL for families of two (2)
- (4) Adult Day Services Cost Share: seven dollars per day (\$7.00/day)

b. Level Two (2)

- (1) Individual: greater than one hundred twenty five percent (125%) and up to two hundred percent (200%) FPL for individuals
- (2) Home Care Cost Share: seven dollars and fifty cents per hour (\$7.50/hour)
- (3) Couple: greater than one hundred twenty five percent (125%) and up to two hundred percent (200%) FPL for families of two (2)
- (4) Adult Day Services Cost Share: fifteen dollars per day (\$15.00/day)

c. Level Three (3)

- (1) Individual: greater than two hundred percent (200%) and up to two hundred fifty percent (250%) FPL for individuals
- (2) Home Care Cost Share: seven dollars and fifty dollars per hour (\$7.50/hour)
- (3) Couple: greater than two hundred percent (200%) and up to two hundred fifty percent (250%) FPL for families of two (2)
- (4) Adult Day Services Cost Share: fifteen dollars per day (\$15.00/day)

4.4 Program Eligibility and Duration of Eligibility

4.4.1 Program Eligibility

- A. The ~~Division Office~~ and its contracted case management agencies shall utilize the ~~Division- Office~~ approved assessment form described in the ~~Division's Office~~ Rules, Regulations, and Standards for Certification of Case Management Agencies, Part 5 of this Subchapter ~~herein which shall serve as the primary~~

~~vehicle for determination of program eligibility.~~ This form shall include, but shall not be limited to:

1. Pertinent demographic information;
 2. Residence;
 3. Date of birth;
 4. Marital status;
 5. Annual income for the previous calendar year, including amount and source of income (such income must be supplied for applicant and spouse when applicant is married);
 6. Information on participation in other home and community ~~based care~~ programs;
 7. Social security number;
 8. All other data essential for the determination of eligibility and the maintenance of client statistics;
 9. Certification through signature of the applicant that permission is granted to the ~~Division Office~~ to verify any and all information supplied on the application form as well as certification through signature that the applicant will supply to the ~~Division Office~~, upon request, written documentation of all information included on the application form.
- B. Such application form shall be made available to the ~~Division's Office's~~ contracted case management agencies. The ~~Division Office~~ may verify eligibility information in one (1) or more of the following ways:
1. Review and certification of eligibility by trained staff for each assessment filed with the ~~Division Office~~ or its contracted case management agencies;
 2. Computer cross checks with available data banks;
 3. Home-based assessment to obtain documentation for age, residence, functional status, and previous year's annual income or income for the ninety (90) days prior to application for services;
 4. Confirmation of Medicaid eligibility by the Rhode Island Department of Human Services (specific to Medicaid ~~LTSS Home and Community Based Services Program only~~);
 5. Physician confirmation of diagnosis and functional need for services;

C. The following documentation shall be accepted as verification of age, residence, and income under the Program:

1. Age: One (1) of the following:
 - a. Rhode Island driver's license or ~~LD~~ identification ~~C~~card;
 - b. Birth certificate; or
 - c. Any other official local, State, or Federal document which indicates verified date of birth.

2. Residence: One (1) of the following:
 - a. Rhode Island ~~D~~drivers license or ~~LD~~ identification Card; or
 - b. Any other official document which indicates permanent residence, (i.e. utility bill, tax return, etc.).

3. Income, Disregards and Medical Expenses: A combination of the following is sufficient to document all income, income disregards and medical expenses included in the definition of such under the Program:
 - a. Previous calendar year federal income tax return;
 - b. Employment income: W-2 form, pay stubs with year to date total, letter from employer indicating length of employment and wages in previous calendar year;
 - c. TDI/Worker's Compensation: an award letter or copies of checks;
 - d. Unemployment benefits: a stamped, unemployment book or copies of checks;
 - e. Alimony or Support: a court decree or other documentation;
 - f. Pension Benefits (Social Security, Veterans' Benefits, SSI, etc.): an award letter or, after determining date of initial award, copy of most recent award letter or written verification from income source;
 - g. Interest Income: savings statements, passbook, letter from savings institution, W-1099 or W-9 interest form;
 - h. Rental Income: rent receipts, lease agreement;
 - i. Self-Employment Income: all receipts, bills, invoices, and other documents establishing income and expenses of operations;

- j. Any listing or verification from an agency or organization for one (1) of the above shall constitute acceptable documentation of income, and allowable medical expense as defined in § 4.1.5(A)(8) and (15) of this Part.

~~4. Income Disregards: Any and all of the following:~~

- ~~a. Gifts from non-governmental sources;~~
- ~~b. The value of surplus foods;~~
- ~~c. Other relief in kind supplied by a public or private agency;~~
- ~~d. Sums of money expended for medical and pharmaceutical purposes that exceed three per cent (3%) of applicant's annual income or, if ninety (90) day income data are used for eligibility purposes, three per cent (3%) of applicant's preceding ninety (90) day income computed on an annual basis.~~

4.4.2 Duration of Eligibility

- A. Clients whose eligibility has been established as described in § 4.4.1 of this Part shall remain eligible for a period of one (1) year, or until the following, whichever occurs first:
 1. The client moves out of Rhode Island and is no longer a full-time resident; or
 2. The client is no longer in need of the services of this Program; or
 3. The Division Office conducts a reassessment of eligibility and determines the client to be ineligible.

4.5 Appeal Procedures

4.5.1 Appeal Procedures

Any person whose application for assistance ~~under the Medicaid Home and Community Base Services Program~~ is denied or whose request for an increase in assistance is denied shall have the right to appeal such a decision. Such appeals shall follow the procedures described in the ~~Medicaid Code of Administrative Rules, Section 0110, "Complaints and Hearings"~~ Rhode Island Code of Regulations, Executive Office of Health and Human Services, Consumer Rights, Responsibilities, and Protections, 210-RICR-10-05-2.

4.6 Advisory Committee

4.6.1 Advisory Committee

A. A permanent State committee to be known as the Home and Community Care Services Advisory Committee is established according to R.I. Gen. Laws § 42-66.3-8.

1. The Committee shall meet quarterly, or more frequently if deemed necessary by the Director of the ~~Division~~ Office.