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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2011**

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A N A C T

RELATING TO HUMAN SERVICES - HEALTH CARE ASSISTANCE FOR WORKING  
PEOPLE WITH DISABILITIES

Introduced By: Senator Walter S. Felag

Date Introduced: February 16, 2011

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 40-8.7.3, 40-8.7-4, 40-8.7-5, 40-8.7-6, 40-8.7-7 and 40-8.7-9 of  
2 the General Laws in Chapter 40-8.7 entitled "Health Care Assistance for Working People with  
3 Disabilities" are hereby amended to read as follows:

4           **40-8.7-3. Purpose.** -- The purpose of the Medicaid buy-in program is to:

5           (1) Enable individuals with disabilities to enter and reenter the work force as soon as  
6 possible;

7           (2) Provide health care and ~~social~~ employment support services to individuals with  
8 disabilities that will enable those individuals to reduce their dependency on cash benefit  
9 programs; and

10           (3) Allow individuals with disabilities the option to purchase Medicaid coverage that is  
11 necessary to enable such individuals to obtain and/or maintain employment; ~~and~~

12           ~~(4) Authorize the department of human services to amend the state plan for personal care~~  
13 ~~services limited to employment related personal care services for individuals with disabilities to~~  
14 ~~continue their employment activity.~~

15           **40-8.7-4. Definitions.** -- As used in this chapter, the term:

16           (1) "Individual with a disability" means a person who has been designated, but without  
17 regard to his or her ability to engage in substantial gainful activity, as specified in the Social  
18 Security Act, 42 U.S.C. section 423(d)(4), as a totally and permanently disabled individual by the

1 Social Security Administration or the Rhode Island Medicaid program, pursuant to an application  
2 for benefits under Title II, Title XVI or Title XIX of the Social Security Act, regardless of current  
3 receipt of cash benefits under the Social Security Act.

4 (2) "Employed" means the individual with disabilities is engaged in a work effort that  
5 meets substantial and reasonable threshold criteria for hours of work, wages, or other measures,  
6 as defined by the department of human services and as permitted by federal law.

7 (3) "Employment Support Services" means activities needed to sustain paid work  
8 including: benefits counseling; supervision; job coaching; vocational evaluation; case  
9 management; job development; customized employment; job training; transportation; training;  
10 tools; equipment; and technology, subject to Centers for Medicare and Medicaid Services  
11 approval.

12 ~~**40-8.7-5. Authorization for the Medicaid buy-in program.**~~ **Authorization for the**  
13 **Medicaid buy-in program and personal care services.** -- (a) The department of human  
14 services is hereby authorized and directed to amend its title XIX state plan to initiate a Medicaid  
15 buy-in program for employed individuals with disabilities.

16 (b) The department of human services is hereby authorized and directed to amend its title  
17 XIX state plan to initiate community choice first for personal care services, including through a  
18 home health agency and/or self-directed plan.

19 (c) The department of human services is hereby authorized and directed to review and/or  
20 amend its title XIX state plan to initiate the full scope of services authorized under 1915(i) of the  
21 social security act, for Medicaid buy-in participants who are eligible upon clinical assessment,  
22 subject to Centers for Medicare and Medicaid Services approval.

23 **40-8.7-6. Eligibility.** -- (a) To be eligible for benefits under the Medicaid buy-in  
24 program:

25 (1) The person shall be an individual with disabilities as defined in section 40-8.7-4, but  
26 without regard to his or her ability to engage in substantial gainful activity, as specified in the  
27 Social Security Act, 42 U.S.C. section 423(d)(4);

28 (2) The person shall be employed as defined in section 40-8.7-4;

29 (3) The person's net accountable income shall not exceed two hundred fifty percent  
30 (250%) of the federal poverty level, taking into account the SSI program disregards and  
31 impairment-related work expenses as defined in 42 U.S.C. section 1396a(r)(2);

32 (4) A maximum of ten thousand dollars (\$10,000) of available resources for an  
33 individual and twenty thousand dollars (\$20,000) for a couple shall be disregarded as shall any  
34 additional resources held in a retirement account, in a medical savings account, or any other

1 account, related to enhancing the independence of the individual and approved under rules to be  
2 adopted by the department; and

3 (5) The person shall be a current medical assistance recipient under section 40-8.5-1  
4 [CNIL] or section 40-8-3(v)[MNIL] or shall meet income, assets, (except as modified by  
5 subdivision (4) above) and eligibility requirements for the medical assistance program under  
6 section 40-8.5-1 [CNIL] or section 40-8-3(v) [MNIL] as such requirements are modified and  
7 extended by this chapter.

8 (b) Appeals Process. The director or designee shall review each application filed in  
9 accordance with regulations, and shall make a determination of whether the application will be  
10 approved and the extent of the benefits to be made available to the applicant, and shall within  
11 thirty (30) days after the filing notify the applicant, in writing, of the determination. If the  
12 application is rejected, the applicant shall be notified the reason for the denial. The director may  
13 at any time reconsider any determination. Any applicant for or recipient of benefits aggrieved  
14 because of a decision, or delay in making a decision, shall be entitled to an appeal and shall be  
15 afforded reasonable notice and opportunity for a fair hearing conducted by the director, pursuant  
16 to chapter 40-8.

17 ~~40-8.7-7. Premiums and cost sharing. --- Premiums. --~~ (a) The department of human  
18 services is authorized and directed to promulgate such rules to establish the monthly premium  
19 payments for employed individuals with disabilities who opt to participate directly in the  
20 Medicaid buy-in program. To participate in the Medicaid buy-in program, the employed  
21 individual with disabilities shall be required to make payment for coverage in accordance with a  
22 monthly payment or payment formula to be established by the department which shall count ~~the~~  
23 ~~individual's monthly unearned income in excess of the medically needy income limit [MNIL] and~~  
24 shall count a portion of ~~their~~ the individual's or couple's earned income on a sliding scale basis, in  
25 accordance with rules to be established by the department.

26 (b) The department is further authorized and directed to promulgate such rules to  
27 encourage businesses, ~~especially small businesses~~ to hire individuals with disabilities, and to  
28 allow employed individuals with disabilities who have access to employer-based health insurance  
29 and who are determined eligible by the department pursuant to this chapter, ~~to determine the~~  
30 ~~optimal health insurance coverage in consultation with the employer and the Medicaid agency to~~  
31 coordinate health insurance coverage options.

32 (c) The department of human services, in consultation with the health insurance  
33 commissioner, employer and disability advocacy organizations, shall, by June 30, 2012,  
34 investigate, develop and promulgate rules that may:

1           (1) Require enrollment in the employer-based health insurance plan as a condition of  
2 participation in the Medicaid buy-in program under this chapter, provided that enrollment in the  
3 employer-based health insurance plan is cost-effective and its benefits are comparable to the  
4 benefits provided by the Medicaid program. Enrollment of the individual and/or the family in the  
5 employer-based health insurance plan without regard to any enrollment season restrictions,  
6 subject to Centers for Medicare and Medicaid Services approval; or

7           (2) Provide opportunities for employers to buy into the Medicaid Buy-in program, at the  
8 employer's expense, where the employer's premium contribution shall be no greater than the  
9 employer's premiums in the existing employer-based health insurance or before September 30,  
10 2012.

11           **40-8.7-9. Regulations and commencement of program.** -- (a) The department of human  
12 services shall promulgate the rules or regulations necessary to implement the provisions of this  
13 act by ~~January 1, 2005~~ September 30, 2011, and enrollment of individuals with disabilities in the  
14 Medicaid buy-in program shall commence under the new rules on ~~January 1, 2006~~ or before  
15 January 1, 2012.

16           (b) The department of human services shall provide quarterly progress reports to the  
17 chairpersons of the house and senate finance committees by the fifteenth (15<sup>th</sup>) day of the  
18 following month of each quarter, from date of passage until March 2013.

19           (c) By March 31, 2013, the department shall report annually to the governor and the  
20 chairpersons of the house and senate finance committees on data included, but not limited to, the  
21 following:

22           (1) The number of applications, the number of approved applications, the number of  
23 applicants who are currently eligible for other forms of medical coverage;

24           (2) Demographics including: age, sex, employment supports provided; and primary  
25 disabling condition, as permissible under the health insurance portability and accountability act of  
26 1996 (HIPAA) privacy and security rules;

27           (3) Prior and current participation in other public assistance programs including  
28 Medicare, Social Security Disability Insurance (SSDI), Supplemental Security Income (SSI),  
29 including the 1619(b) provision;

30           (4) The number of beneficiaries employed, and the average wage of those beneficiaries  
31 prior to and post Medicaid buy-in plan eligibility;

32           (5) The amounts of premiums collected;

33           (6) Medicaid claims data including pre-buy-in, while on the buy-in, and if disenrolled,  
34 after buy-in to perform an analysis of costs/per member, per month, of buy-in enrollees shall also

1 be provided by the Medicaid agency to the Medicaid Infrastructure Grant recipient, as provided  
2 for in the data use agreement;

3 (7) Findings and recommendations with regard to "best practices" used by other states in  
4 the New England region and nationwide that should be considered to increase employment  
5 among Medicaid beneficiaries with disabilities and how to best support Medicaid beneficiaries  
6 with disabilities who are working; and

7 (8) Identification and strategies that the finance committees should consider regarding  
8 challenges or opportunities for workers with disabilities in Rhode Island as the Affordable Care  
9 Act is implemented; including, but not limited to, ensuring that employment supportive policies  
10 and supports are integrated into the state's design and implementation of the following long-term  
11 care Affordable Care Act provisions: Section 10202-Balancing Incentive Payments Plan (BIPP);  
12 1915(i) State Plan Amendment; Section 2401-Community First Choice (CFC); Section 2703-  
13 Health Homes for Individuals with chronic conditions; Money Follows the Person; 2014  
14 Medicaid Expansion; and the dual eligible integrated care plan models.

15 SECTION 2. This act shall serve as a Joint Resolution required pursuant to Rhode Island  
16 General Laws section 42-12.4-1, et seq.

17 WHEREAS, The General Assembly enacted Chapter 12.4 of Title 42 entitled "The  
18 Rhode Island Medicaid Reform Act of 2008"; and

19 WHEREAS, Rhode Island General Laws section 42-12.4-7 provides that any change that  
20 requires implementation of a rule or regulation or modification of a rule or regulation in existence  
21 prior to the implementation of the global consumer choice section 1115 demonstration ("*the*  
22 *demonstration*") shall require prior approval of the general assembly; and further provides that  
23 any category II change or category III change as defined in the demonstration shall also require  
24 prior approval to the general assembly; and

25 WHEREAS, Rhode Island General Law section 42-7.2-5 states that the secretary of the  
26 office of health and human services is responsible for the "review and coordination of any Global  
27 Consumer Choice and Human Services is responsible for the "review and coordination of any  
28 Global Consumer Choice Compact Waiver requests and renewals as well as any initiatives and  
29 proposals requiring amendments to the Medicaid state plan or category I or II changes" as  
30 described in the demonstration with "the potential to affect the scope, amount, or duration of  
31 publicly-funded health care services, provider payments or reimbursements, or access to or the  
32 availability of benefits and services provided by Rhode Island general and public laws"; and

33 WHEREAS, In pursuit of a more cost-effective consumer choice system of care that is  
34 fiscally sound and sustainable, the Secretary requests that the following proposal to amend the

1 demonstration be approved by the general assembly:

2           *Modify the Sherlock Act.* The department of human services proposes refining the  
3 determination of eligibility, and premiums of workers with disabilities enrolled in the Medicaid  
4 Buy-In program; now, therefore be it

5           RESOLVED, That the general assembly hereby approves the changes set forth in the  
6 proposal listed above to amend the demonstration; and be it further

7           RESOLVED, That the secretary of the office of health and human services is authorized  
8 to pursue and implement any such necessary waiver amendments, category II or category III  
9 changes, state plan amendments and/or changes to the applicable department's rules, regulations  
10 and procedures approved herein and as authorized by section 42-12.4-7.

11           SECTION 3. This act shall take effect on July 1, 2011.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO HUMAN SERVICES - HEALTH CARE ASSISTANCE FOR WORKING  
PEOPLE WITH DISABILITIES

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1           This act would change the determination of eligibility, premiums and co-sharing of  
2 workers with disabilities enrolled into the Sherlock Medicaid buy-in program consistent with  
3 centers for Medicare and Medicaid services. This act would also establish the legal authority for  
4 the department of human services to undertake a series of programmatic reforms geared toward  
5 the restructuring of its Medicaid programs in FY 2012.

6           This act would take effect on July 1, 2011.

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