It is enacted by the General Assembly as follows:

SECTION 1. Findings and declarations. The general assembly hereby finds and declares as follows:

(1) Ensuring that seniors and people with disabilities in Rhode Island have access to long-term services and supports in home and community based settings is an issue of statewide concern.

(2) It is in the best interest of the state to create a variety of home and community based service options in order to maximize consumer choice and provide the right care, in the right setting, at the right time, for individuals with long-term care service and supports needs.

(3) In 2015, seventy-seven percent (77%) of Medicaid spending for long-term services and supports for older adults and adults with physical disabilities in Rhode Island went to institutional care rather than home and community based care, compared with a national average of almost forty-four percent (44%) making Rhode Island one of the least balanced states in the country.

(4) State efforts to give people more cost-effective choices of Medicaid-funded long-term services and supports would be greatly aided by offering an independent provider home care option for people with disabilities and seniors and implementing the proper infrastructure to support the program.

(5) The implementation of a successful individual provider home care option will rely on
the ability to attract and maintain a robust, well qualified, adequately trained and compensated workforce to deliver high quality services and meet the increasing demand for these services due to the projected increase in the state’s aging population.

SECTION 2. Title 36 of the General Laws entitled "PUBLIC OFFICERS AND EMPLOYEES" is hereby amended by adding thereto the following chapter:

CHAPTER 11.1

INDIVIDUAL PROVIDERS OF DIRECT SUPPORT SERVICES

36-11.1-. Definitions.

For the purposes of this chapter:

(1) "Direct support services" has the meaning given to it under § 40-8.14-3.

(2) "Individual provider" has the meaning given to it under § 40-8.14-1.

(3) "Participant" has the meaning given to it under § 40-8.14-1.

(4) "Participant's representative" has the meaning given to it under § 40-8.14-1.

36-11.1-. Rights of individual providers and participants.

For the purposes of the Rhode Island state labor relations act, under chapter 11.1 of title 36, individual providers shall be considered, by virtue of this chapter, employees within the meaning of § 28-7-3 and state employees within the meaning of § 36-11-1 employed by the director of human services or the director's representative. For purposes of this chapter, no individual provider shall be deemed excluded from the definition of "employee" under § 28-7-3(3)(ii) because they provide care to a family member or because they are in domestic service in a person's home. This section does not require the treatment of individual providers as public employees for any other purpose. Individual providers are not state employees for purposes of chapter 31 of title 9 or any similar law. Chapter 11.1 of title 36 shall apply to individual providers except as otherwise provided in this chapter. Notwithstanding § 36-11-1.1, chapter 11.1 of title 36 shall apply to individual providers regardless of part-time, full-time, casual, or seasonal employment status.

36-11.1-. Scope of meet and negotiate obligation.

If an exclusive representative is certified pursuant to this chapter, the mutual rights and obligations of the state and an exclusive representative of individual providers to meet and negotiate regarding terms and conditions shall extend to the subjects covered under § 40-8.14-4(c), but shall not include those subjects reserved to participants or participants' representatives by § 36-11.1-4.

36-11.1-. Rights of covered program participants.

No provision of any agreement reached between the state and any exclusive
representative of individual providers, nor any arbitration award, shall interfere with the rights of
participants or participants' representatives to select, hire, direct, supervise, and terminate the
employment of their individual providers; to manage an individual service budget regarding the
amounts and types of authorized goods or services received; or to receive direct support services
from individual providers not referred to them through a state registry.

36-11.1-5. Legislative action on agreements.
Any agreement reached between the state and the exclusive representative of individual
providers under chapter 11.1 of title 36 shall be submitted to the general assembly to be accepted
or rejected in accordance with § 36-6-5.

Individual providers shall be subject to the prohibition on strikes applied to state
employees under § 36-11-6.

Individual providers shall be subject to the interest arbitration procedures applied to
essential employees under §§ 36-11-7.1 through 36-11-11.

The only appropriate unit for individual providers shall be a statewide unit of all
individual providers. The unit shall be treated as an appropriate unit under § 28-7-15. Individual
providers who are related to their participant or their participant's representative shall not for such
reason be excluded from the appropriate unit.

Beginning October 1, 2018, upon a showing made to the chairperson of the labor
relations board by any employee organization wishing to represent the appropriate unit of
individual providers that at least fifty (50) individual providers support such representation, the
chairperson of the labor relations board shall provide to such organization within seven (7) days
the most recent list of individual providers compiled under § 40-8.14-4(f), and three (3)
subsequent monthly lists upon request. The chairperson of the labor relations board shall provide
lists compiled under § 40-8.14-4(f), upon request, to any exclusive representative of individual
providers. To facilitate operation of this chapter, the director of the department of human services
shall provide all lists to the chairperson of the labor relations board, upon the request of the
chairperson of the labor relations board.

Beginning January 1, 2019, any employee organization that desires to represent the
appropriate unit of individual providers may seek exclusive representative status pursuant to an
election conducted pursuant to §§ 28-7-14 through 28-7-19. Certification elections for individual
providers shall be conducted by mail ballot, and such election shall be conducted upon an
appropriate petition stating that among individual providers who have been paid for providing
direct support services to participants within the previous twelve (12) months, a number of
individual providers equal to at least thirty percent (30%) of those eligible to vote desire to be
represented by the petitioner. The individual providers eligible to vote in any such election shall
be those individual providers on the monthly list of individual providers compiled under § 40-
8.14-4(f), most recently preceding the filing of the election petition. Except as otherwise
provided, elections under this section shall be conducted in accordance with §§ 28-7-14 through
28-7-19.

SECTION 3. Title 40 of the General Laws entitled "HUMAN SERVICES" is hereby
amended by adding thereto the following chapter:

CHAPTER 8.14
QUALITY SELF-DIRECTED SERVICES


For purposes of this chapter:

(1) "Activities of daily living" means everyday routines generally involving functional
mobility and personal care, such as bathing, dressing, eating, toileting, mobility and transfer.

(2) "Covered program" means a program to provide direct support services funded in whole or in part by the state of Rhode Island, including the state's Comprehensive § 1115 Waiver Demonstration, integrated care initiative, personal assistance services and supports program, family-directed respite programs for adults and children, Rhode to Home, and any and all waiver programs established pursuant to home and community-based service waivers authorized under §
1915(c) (42 U.S.C. § 1396 n) or § 1115 (42 U.S.C. § 1315) of the federal Social Security Act, and Rhode Island general laws, including, but not limited to, chapters 8, 8.1, 8.7, 8.9, and 8.10 of title 40, and any plan or program developed pursuant to the executive office of health and human services' authority under §§ 40-8-17 and 40-8.9-9(d); and any similar program that may provide similar services in the future.

(3) "Direct support services" means personal care assistance, homemaker, and companion
services covered by medical assistance, including:

(i) Participant assistance with activities of daily living and instrumental activities of daily
living as defined in this chapter;

(ii) Assistance with monitoring health status and physical condition;

(iii) Assistance with preparation and eating of meals, however not including the cost of
meals;
(iv) Assistance with housekeeping activities to include, but not be limited to, bed making, dusting, vacuuming, laundry, grocery shopping, and cleaning;
(v) Assistance with ambulation; use of special mobility devices and directly providing or arranging transportation; and
(vi) Other similar, in-home, non-medical long-term services and supports provided to an elderly person or person with a disability by their caretaker or direct support service provider to meet such participant's daily living needs and ensure that such participant may adequately function in the participant's home and have safe access to the community.

(4) "Director" means the director of the department of human services.

(5) "Individual provider" means an individual selected by and working under the direction of a participant in a covered program, or a participant's representative, to provide direct support services to the participant, but does not include an employee of a provider agency, subject to the agency's direction and control commensurate with agency employee status or an individual providing services to a participant electing the personal choice option in any program.

(6) "Instrumental activities of daily living" means the activities often performed by a person who is living independently in a community setting during the course of a normal day, such as managing money, shopping, telephone use, travel in community, housekeeping, and preparing meals.

(7) "Participant" means a person who receives direct support services through a covered program.

(8) "Participant's representative" means a participant's legal guardian or an individual having the authority and responsibility to act on behalf of a participant with respect to the provision of direct support services through a covered program.

All covered programs shall operate consistent with this chapter, including by allowing participants and participants' representatives within the programs to elect the option of receiving services through individual providers as defined in § 40-8.14-1, notwithstanding any inconsistent provisions of any Medicaid state plan or program developed pursuant to the executive office of health and human services' authority under §§ 40-8-17 and 40-8.9-9(d); or any other similar statutes or regulations.

40-8.14-3, Optional service providers.
The requirement under § 40-8.14-2 shall not restrict the state's ability to allow participants and participants' representatives within the covered programs to choose not to
employ an individual provider, and instead elect the option of receiving direct support services through a personal choice option or through the employees of provider agencies.


(a) The director shall allow to all participants within a covered program the option of employing an individual provider to provide direct support services.

(b) The director shall ensure that all employment of individual providers is in conformity with this chapter and chapter 11.1 of title 36, to include modification of program operations as necessary to ensure proper classification of individual providers, and to require that all relevant vendors within covered programs assist and cooperate as needed, including managed care organizations and providers of fiscal support, fiscal intermediary, financial management, or similar services to provide support to participants and participants' representatives with regard to employing individual providers, and to otherwise fulfill the requirements of this chapter.

(c) The director shall:

(1) Establish for all individual providers' compensation rates, payment terms and practices, and any benefit terms; provided that these rates and terms may permit individual provider variations based on traditional and relevant factors otherwise permitted by law;

(2) Provide for required orientation programs within three (3) months of hire for individual providers newly hired on or after October 1, 2018, regarding their employment within the covered programs through which they provide services;

(3) Have the authority to provide for relevant training and educational opportunities for individual providers, as well as for participants and participants' representatives who receive services from individual providers, including opportunities for individual providers to obtain certification documenting additional training and experience in areas of specialization;

(4) Have the authority to provide for the maintenance of a public registry of individuals who have consented to be included to:

(i) Provide routine, emergency, and respite referrals of qualified individual providers who have consented to be included in the registry to participants and participants' representatives;

(ii) Enable participants and participants' representatives to gain improved access to, and choice among, prospective individual providers, including by having access to information about individual providers' training, educational background, work experience, and availability for hire;

(iii) Provide for appropriate employment opportunities for individual providers and a means by which they may more easily remain available to provide services to participants within covered programs;

(5) Establish provider qualification standards for the workforce of individual providers,
including behavior that would disqualify someone from providing services as an individual

provider;

(6) Establish other appropriate terms and conditions of employment governing the
workforce of individual providers without infringing on participants’ or their responsible parties’
rights and responsibilities to hire, direct, supervise, and/or terminate the employment of their
individual providers; and

(7) Establish an advisory board for participants, their representatives and advocates to
communicate directly with the director about the provision of quality direct support services in
covered programs.

(d) The director’s authority over terms and conditions of individual providers’
employment, including compensation, payment, and benefit terms, employment opportunities
within covered programs, individual provider orientation, training, and education opportunities,
and the operation of public registries shall be subject to the state's obligations to meet and
negotiate under chapters 11 of title 36 and 7 of title 28, as modified and made applicable to
individual providers under chapter 11.1 of title 36, and to agreements with any exclusive
representative of individual providers, as authorized by chapters 11 of title 36 and 7 of title 28, as
modified and made applicable to individual providers under chapter 11.1 of title 36. Except to the
extent otherwise provided by law, the director shall not undertake activities in subsections (c)(3)
and (c)(4) of this section, prior to October 1, 2018, unless included in a negotiated agreement and
an appropriation has been provided by the legislature to the director.

(e) The director shall cooperate in the implementation of chapter 11.1 of title 36 with all
other relevant state departments and agencies. Any entity providing relevant services within
covered programs, including providers of fiscal support, fiscal intermediary, financial
management, or similar services to provide support to participants and participants’
representatives with regard to employing individual providers shall assist and cooperate with the
director of the department of human services in the operations of this section, including with
respect to the director's obligations under subsections (b) and (f) of this section.

(f) The director shall, no later than October 1, 2018, and then monthly thereafter, compile
and maintain a list of the names and addresses of all individual providers who have been paid for
providing direct support services to participants within the previous six (6) months. The list shall
not include the name of any participant, or indicate that an individual provider is a relative of a
participant or has the same address as a participant. The secretary shall share the lists with others
as needed for the state to meet its obligations under chapters 11 of title 36 and 7 of title 28 as
modified and made applicable to individual providers under chapter 11.1 of title 36, and to
facilitate the representational processes under §§ 36-11.1-9 and 36-11.1-10. This shall not include
access to private data on participants or participants' representatives. Nothing in this section or
chapter 11.1 of title 36 shall alter the access rights of other private parties to data on individual
providers.

(g) The director shall immediately commence all necessary steps to ensure that services
offered under all covered programs are offered in conformity with this chapter, to gather all
information that may be needed for promptly compiling lists required under this chapter,
including information from current vendors within covered programs, and to complete any
required modifications to currently operating covered programs by October 1, 2018.


Should any part of this act be declared invalid or unenforceable, or the enforcement or
compliance with it is suspended, restrained, or barred, either by the state or by the final judgment
of a court of competent jurisdiction, the remainder of this act shall remain in full force and effect.

SECTION 4. This act shall take effect upon passage.
This act would enable the creation of a public registry of home health aides giving seniors and individuals living with disabilities another choice when accessing long-term care options. The act would also provide that the state would set wage rates and qualification standards for home health aides on the registry. The act would further provide that these home health aides would have the right to choose to form a union through an election.

This act would take effect upon passage.