

**STATE OF RHODE ISLAND  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF ELDERLY AFFAIRS**

**PUBLIC NOTICE OF PROPOSED RULE-MAKING**

In accordance Rhode Island General Laws (RIGL) 42-35, notice is hereby given that the Department of Human Services Division of Elderly Affairs proposes to amend the following rule:

**RULES, REGULATIONS AND STANDARDS GOVERNING THE HOME AND  
COMMUNITY CARE SERVICES TO THE ELDERLY PROGRAM**

Proposed rule-making to the Home and Community Care rules are being initiated to support changes made to the poverty level guidelines and cost-share rates. The current regulations reflect outdated poverty level guidelines and rates.

In the development of this rule, consideration was given to the following: (1) alternative approaches; and (2) overlap or duplication with other statutory and regulatory provisions. No alternative approach or duplication or overlap was identified based upon available information.

These proposed rules are accessible on the R.I. Secretary of State website (<http://www.sec.state.ri.us/ProposedRules/>) and the DHS website ([www.dhs.ri.gov](http://www.dhs.ri.gov)) or available in hard copy upon request (401 462-2018 or RI Relay, dial 711). Interested persons should submit data, views or written comments by Friday, November 2, 2012 to Kimberly Merolla-Brito, Office of Policy Development, RI Department of Human Services, Louis Pasteur Building, 57 Howard Avenue Fl # 1, Cranston, RI 02920.

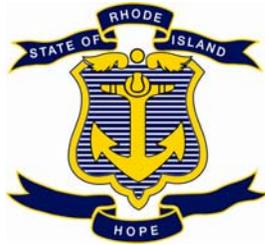
In Accordance with RIGL 42-35-3, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice.

The Department of Human Services does not discriminate against individuals based on race, color, national origin, sex, gender identity or expression, sexual orientation, religious belief, political belief or handicap in acceptance for or provision of services or employment in its programs or activities.

State of Rhode Island and Providence Plantations

Department of Human Services

Division of Elderly Affairs



**RULES, REGULATIONS AND STANDARDS GOVERNING  
THE HOME AND COMMUNITY CARE SERVICES TO THE  
ELDERLY PROGRAM**

**October 1999**

~~Donald L. Carcieri~~  
~~Governor~~

~~Corinne Calise Russo~~  
~~Director~~

***As Amended:***

January 2002 (re-filing in accordance  
with the provisions of section 42-34-4.1 of  
the Rhode Island General Laws)

January 2006

January 2007 (re-filing in accordance  
with the provisions of section 42-34-4.1 of  
the Rhode Island General Laws)

January 2008

June 2009

**October 2012 (Proposed)**

***Rules and Regulations Governing the Home and Community Care Services to the Elderly Program***

***Page Number***

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## SECTION I INTRODUCTION

### 100. *Preface*

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.G.L. § 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.

Pursuant to the provisions of the Administrative Procedures Act, R.I.G.L. § 42-35-3, the following were given consideration in arriving at the regulations: (a) alternative approaches to the regulations; and (b) duplication or overlap with other state regulations. No alternative approach was identified; nor any duplication or overlap.

### 200. *Program Authority*

The Home 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 Rhode Island General Laws {R.I.G.L}. § 42-66.3-1 *et.seq.*, “Home and Community Care Services to the Elderly”, as amended.

### 300. *Nondiscrimination and Civil Rights Policy*

Each agency providing home and community care services 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.

### 400. *Compliance with All Laws, Codes, Rules and Regulations*

Each agency that delivers home and community care services to the elderly shall be responsible for complying with all local, state, and federal laws, codes, rules and regulations that apply to the program or facility.

### 500. *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.

## 600. *Definitions*

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

1. “**Adult day services program**” means an agency licensed through the Department of Health that provides a comprehensive supervised program on a regular basis to physically and/or mentally handicapped 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.
2. “**Assisted living residence**” means a publicly or privately operated residence that is licensed pursuant to Chapter 23-17.4 of the General Laws of Rhode Island, as amended.
3. “**Case management agency**” means a community-based agency designated by the ~~Department~~ Division to provide care coordination for home and community care clients.
4. “**Cost share**” means the assigned client contribution to the cost of services. As used herein, “cost share” shall have the same meaning as “copay.”
5. “**Department**” means the Rhode Island Department of ~~Elderly Affairs~~ Human Services.
6. “**Division**” means the Rhode Island Department of Human Services, Division of Elderly Affairs.
7. “**Director**” means the Director of the Rhode Island ~~Department~~ Division of Elderly Affairs.
78. “**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.
89. “**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 ~~Department~~ Division regulations.
910. “**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 Chapter 23-17 of the General Laws of Rhode Island, as amended.
1011. “**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.
112. “**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.
1213. “**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.

~~13~~14. ***“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:

- a. the amount of capital gains excluded from adjusted gross income;
- b. support money;
- c. alimony;
- d. non-taxable strike benefits;
- e. cash public assistance and relief not including relief granted pursuant to applicable statutes;
- 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.

***“Income”***, as used herein, shall not include:

- a. gifts from non-government sources;
- b. surplus foods;
- c. other relief in kind supplied by a public or private agency;
- d. 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.

~~14~~15. ***“Long-term care ombudsperson”*** means the person or persons designated by the 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.

~~15~~16. ***“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.

~~16~~17. ***“The Program”***, as used herein, means the Home and Community Care Services for the Elderly Program.

## SECTION II PURPOSE AND SERVICES AVAILABLE

### 100. *Purpose*

The purpose of the Program shall be to provide levels of reimbursement for necessary covered services when the provision of these services will: (a) promote independent living; and (b) allow the client to remain at home. It is the intent of this Program to prevent or delay institutionalization. It is not necessary to be eligible for institutionalization to receive services under this Program.

### 200. *Services Available*

Home and community care services shall consist of (1) Medicaid waiver services for Medicaid eligible clients; or (2) for the state funded co-payment program, care coordination, a combination of homemaker/personal care services and other support services deemed necessary by the Director.

## SECTION III CONTRACTS AND PAYMENT TO VENDORS

### 100. *Contracts*

The Director is authorized to enter into contracts for the provision of services under this Program. Contractors shall meet all applicable licensing and certification requirements. Contracts may include standards for participation above and beyond minimum licensing and certification requirements. Contracts may be renewed based on satisfactory performance as determined by the ~~Department~~ Division.

### 200. *Payment to Vendors*

Payment to vendors shall be based on a rate of reimbursement set by the State of Rhode Island for these services. Payments authorized by the ~~Department~~ Division to vendors under this Program shall be equal to this state rate minus any required client payment.

## SECTION IV CLIENT ELIGIBILITY AND FINANCIAL PARTICIPATION BY CLIENTS

### 100. *Client Eligibility*

To be eligible for this 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:

**Part I.** Medicaid eligible residents of the state who are age sixty-five (65) or older and who meet the financial guidelines of the Rhode Island Medical Assistance Program, except that they may retain cash and/or liquid resources not exceeding four thousand dollars (\$4,000) for an individual and six thousand dollars (\$6,000) for a married couple for the medically needy population or two thousand dollars (\$2,000) for an individual and three thousand dollars (\$3,000) for a married couple for the categorically eligible population, shall be provided the services without charge. Eligibility for the Rhode Island Medical Assistance Program is determined by the ~~Department of Human Services~~ state Medicaid agency. Applicants must also be assessed and determined to be in need of the assistance provided by the Program. **OR**

**Part II.** 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 of reference 1 herein; 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 of reference 1 herein.

Availability of services under Part II of the Program shall be dependent upon appropriation of funds by the Rhode Island General Assembly. Persons meeting the eligibility requirements of Part II (above) shall be eligible for the co-payment portion of the Program.

### 200. *Financial Participation by Clients*

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

Clients determined eligible under Section IV, Part II of these Rules and Regulations (above) shall be assigned a cost share based on their income level and their service need. All client payments under this Program shall be paid directly to a vendor(s) of service(s).

#### ***Income Guidelines and Cost Shares for Co-pay (CNOM) Program as of July 1, 2009:-***

**Note:** Each year, when new FPL guidelines are issued, the Program income eligibility guidelines will be adjusted accordingly. Additionally, these Program cost share amounts may be adjusted from time to time by the Director, ~~up to a maximum of the amounts cited below:~~

	<del>July 1, 2009 Guidelines</del>	<del>July 1, 2009 Cost Share</del>
Level 1	<del>Individual: up to \$13,537 (125% FPL)</del>	<del>Home Care: \$4.50/Hour</del>
	<del>Couple: up to \$18,212</del>	<del>Adult Day Services: \$7.00/Day</del>
Level 2	<del>Individual: up to \$21,660 (200% FPL)</del>	<del>Home Care: \$7.50/Hour</del>
	<del>Couple: up to \$29,140</del>	<del>Adult Day Services: \$15.00/Day</del>

## SECTION V PROGRAM ELIGIBILITY AND DURATION OF ELIGIBILITY

### 100. *Program Eligibility*

The ~~Department~~ Division and its delegate agencies shall utilize the ~~Department~~Division approved assessment form described in the ~~Department's~~Division's *Rules, Regulations, and Standards for Certification of Case Management Agencies* of reference 2 herein which shall serve as the primary vehicle for determination of program eligibility. This form shall include, but shall not be limited to:

- a. pertinent demographic information;
- b. residence;
- c. date of birth;
- d. marital status;
- e. 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);
- f. information on participation in other home and community care programs;
- g. social security number;
- h. all other data essential for the determination of eligibility and the maintenance of client statistics;
- i. certification through signature of the applicant that permission is granted to the ~~Department~~ Division to verify any and all information supplied on the application form as well as certification through signature that the applicant will supply to the ~~Department~~ Division, upon request, written documentation of all information included on the application form.

Such application form shall be made available to the ~~Department's~~ Division's delegate agencies.

The ~~Department~~ Division may verify eligibility information in one or more of the following ways:

- a. review and certification of eligibility by trained staff for each assessment filed with the ~~Department~~ Division or its delegate agencies;
- b. computer cross checks with available data banks;
- c. 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;
- d. confirmation of Medicaid eligibility by the RI ~~Department of Human Services~~ state Medicaid agency ;
- e. physician confirmation of diagnosis and functional need for services;

Written notification shall be made to each applicant of eligibility or ineligibility within thirty (30) days of receipt by the ~~Department~~ Division of a completed application and assessment. When applicable, this notification shall detail the reason(s) an application is being denied and the process for appeal of this decision (refer to Section VI, Appeal Procedures, of these Rules and Regulations).

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

**Age:** One of the following:

1. RI Driver's License;
2. Birth Certificate;
3. RIPTA I. D. Card;
4. DEA I.D. Card;
5. RIPAE I.D. Card;
6. Any other official document which indicates date of birth.

**Residence:** One of the following:

1. The address furnished to the Registry of Motor Vehicles for the applicant's operator's license;
2. The address to which the applicant's motor vehicle is registered;
3. The address at which the applicant filed his/her last federal and/or state income tax form(s);
4. The address furnished to the companies from which the applicant has obtained retail credit cards;
5. The address furnished to the financial institutions where the applicant maintains accounts;
6. The address furnished to the tax collector and/or assessor in those communities where the applicant own taxable real or personal property;
7. The address furnished to the insurance companies with which the applicant maintains policies;
8. The address furnished by the applicant to any business, professional, union, or fraternal organizations of which he/she is a member;
9. The address furnished to governmental agencies with which the applicant has contact;
10. RIPAE ID Card;
11. The address of a hospital, convalescent home, or like facility at which the applicant has been a patient or resident for the preceding thirty (30) days or longer.

**Income:** A combination of the following is sufficient to document all income included in the definition of such under the Program:

1. Previous calendar year federal income tax return;
2. 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;
3. TDI/Worker's Compensation: an award letter or copies of checks;
4. Unemployment benefits: a stamped, unemployment book or copies of checks;
5. Alimony or Support: a court decree or other documentation;
6. Pension Benefits (Social Security, Veterans' Benefits, SSI, etc.): an award letter or, after determining date of initial award, copy of most recent check or written verification from income source;
7. Interest Income: savings statements, passbook, letter from savings institution, W-1099 or W-9 interest form;
8. Rental Income: rent receipts, lease agreement;
9. Self-Employment Income: all receipts, bills, invoices, and other documents establishing income and expenses of operations;

10. Any listing or verification from an agency or organization for one of the above shall constitute acceptable documentation of income.

**Income Disregards:** Any and all of the following:

1. Gifts from non-governmental sources;
2. The value of surplus foods;
3. Other relief in kind supplied by a public or private agency;
4. 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.

**200. *Duration of Eligibility***

Clients whose eligibility has been established as described in Section V herein shall remain eligible for a period of one (1) year, or until the following, whichever occurs first:

- a. The client moves out of Rhode Island and is no longer a full time resident; or
- b. The client is no longer in need of the services of this Program; or
- c. The ~~Department~~ Division conducts a reassessment of eligibility and determines the client to be ineligible.

## SECTION VI APPEAL PROCEDURES

### 100. Appeal Procedures

Any person whose application for assistance under the 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 below:

#### a. *Notice of Denial*

1. Applicants shall receive written notice that the application for home and community services has been denied. Such notice shall be provided by the ~~Department~~ Division on a standard denial form developed by the ~~Department~~ Division. This notice will be provided as soon after receipt of the application as possible, but not more than thirty (30) days after receipt of the application.

This notice shall include: the reason(s) for denial and the procedure for appeal (as below).

#### b. *Procedure for Appeal*

1. Applicants shall contact the ~~Department~~ Division Hearing Officer to request an appeal. The ~~Department~~ Division Hearing Officer shall be a ~~Department~~ Division administrative employee who is not responsible for administration of the Program.

2. A hearing shall be scheduled to take place as soon as possible but not longer than fourteen (14) days after the request for the hearing is received by the ~~Department~~ Division.

3. The applicant must contact the ~~Department~~ Division within ninety (90) days of the date of the denial letter from the ~~Department~~ Division. No hearing shall be granted upon a request more than ninety (90) days from the date of the denial letter. However, an applicant may apply or reapply for services at any time at the appropriate agency.

4. Written notice of the hearing shall be supplied to the applicant and shall include:

- a. a statement of the time, place, and nature of the hearing;
- b. a statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. a reference to the particular sections of the statutes and rules involved; and
- d. a short and plain statement of the issues involved.

5. The applicant shall have the right to have with him/her any person or any documentation pertinent to the issues involved. The applicant must supply documentation at the time of the hearing for age, residence, and income.

6. The ~~Department~~ Division Hearing Officer shall maintain a record of the hearing including the following:

- a. evidence received or considered;
- b. statement of matters officially noted;
- c. questions and offers of proofs and rulings;
- d. findings and exceptions;
- e. the decision by the Hearing Officer, and
- f. all memoranda and data submitted to the Hearing Officer presiding at the Hearing.

7. Oral proceedings or any part thereof shall be transcribed on request of any party, and copies made available to said party at cost.

8. Findings of fact shall be exclusively on the evidence and matters officially noted.



## SECTION VII ADVISORY COMMITTEE

### 100. *Advisory Committee*

A permanent state committee to be known as the Home and Community Care Services Advisory Committee is established for the purpose of advising the Director relative to the needs and concerns of home and community care recipients of the Program.

The committee shall consist of twenty-three (23) members:

- Six (6) of whom shall be representatives of the general public age sixty (60) years of age or older, two (2) to be appointed by the Speaker of the House who shall be members of AARP, one (1) to be appointed by the House Minority Leader, two (2) to be appointed by the Senate President, one (1) of whom shall be a member of AARP, and one (1) to be appointed by the Senate Minority Leader;
- One (1) of whom shall be a representative of the general public, fifty-nine (59) years of age or under to be appointed by the Governor's Commission on Disability;
- Six (6) of whom shall be representatives of home and community care providers to be appointed by the Director, including one (1) representative of adult day services centers, one (1) representative of assisted living residences, one (1) representative of home nursing care providers/home care providers, one (1) representative of case management agencies, one (1) representative of respite care providers, and one (1) representative of a visiting nurses association;
- One (1) of whom shall be a family caregiver or a person sixty (60) years of age or older to be appointed by the Director of Elderly Affairs;
- One (1) of whom shall be the long-term care ombudsperson;
- One (1) of whom shall be the chairperson of the long-term care coordinating council, or designee;
- One (1) of whom shall be the health care advocate of the Attorney General's Department;
- One (1) of whom shall be the Executive Director of the Rhode Island Partnership for Home Care, Inc., or designee;
- One (1) of whom shall be the Director of the Rhode Island Visiting Nurse Network, or designee;
- One (1) of whom shall be the Director of the Rhode Island Chapter of the Alzheimer's Association, or designee;
- One (1) of whom shall be the Director of Health, or designee;
- One (1) whom shall be the Director of Human Services or designee; and
- One (1) of whom shall be the Director of Mental Health, Retardation and Hospitals, or designee.

The members of this committee shall meet at the call of the Director and organize and shall select from among themselves a chairperson.

The Committee shall meet at least eight (8) times per year.

Vacancies in the Committee shall be filled in the same manner as the original appointment. The membership of the Committee shall receive no compensation for their services. The Committee may call upon the ~~Department~~ Division to provide technical or other assistance as it may deem necessary to accomplish its purpose.

All departments, divisions and agencies of the state shall furnish any advice and information, documentary and otherwise, to the Committee and its agents as is deemed necessary or desirable by the Committee to facilitate the purposes of Chapter 42-66.3 of the Rhode Island General Laws, as amended.

## **REFERENCES**

1. *The 2009 HHS Poverty Guidelines*, United States Department of Health and Human Services. Available online: <http://aspe.hhs.gov/poverty/09poverty.shtml> and subsequent amendments thereto.
2. *Rules, Regulations, and Standards for Certification of Case Management Agencies*, Rhode Island ~~Department~~ Division of Elderly Affairs, May 2007 and subsequent amendments thereto. Available online: <http://www2.sec.state.ri.us/dar/regdocs/released/pdf/DELDA/4656.pdf>

*Saturday, June 06, 2009*  
*homecommcarefinal-june09*