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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 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 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 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.

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. "Adult day services program" means an agency licensed through the 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.

2. "Assisted living residence" means a publicly or privately operated residence that is licensed pursuant to R.I. Gen. Laws § 23-17.4, as amended.

3. "Case management agency" means a community-based agency designated by the 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. "Division" means the Rhode Island Department of Human Services, Division of Elderly Affairs.

6. "Director" means the Director of the Rhode Island Division of Elderly Affairs.

7. "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.

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.

9. "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.

11. "Functional impairment" 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.

12. "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. "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.

i. "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.

14. "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. "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. "The Program", as used herein, means the 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 innovative options to help them remain in the community and avoid premature institutionalization.

4.2.2 Services Available

A. Home and community care services shall consist of:

1. Medicaid home and community based 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.

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 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 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.

2. Eligibility for the Rhode Island Medicaid Program is 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 Client 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.

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-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 Program shall be set by the Department of Human Services.

B. Copay Program

1. Clients determined eligible under § 4.3 of this Part 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).

C. Income Guidelines and Cost Shares for Co-pay (CNOM) Program are determined by the Division according to the federal poverty limit (FPL).

1. Program income eligibility guidelines will be adjusted every year 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 1

(1) Individual: up to 125% FPL for individuals

(2) Home Care Cost Share: $4.50/Hour

(3) Couple: up to 200%FPL for families of two (2)

(4) Adult Day Services Cost Share: $7.00/Day

b. Level 2

(1) Individual: up to (200%FPL for individuals)

(2) Home Care Cost Share: $7.50/Hour

(3) Couple: up to 200%FPL for families of two (2)

(4) Adult Day Services Cost Share: $15.00/Day

4.4 Program Eligibility and Duration of Eligibility

4.4.1 Program Eligibility

A. The Division and its contracted case management agencies shall utilize the Division-approved assessment form described in the Division's 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 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 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, upon request, written documentation of all information included on the application form.

B. Such application form shall be made available to the Division's contracted case management agencies. The Division may verify eligibility information in one or more of the following ways:

1. Review and certification of eligibility by trained staff for each assessment filed with the Division 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 RI Department of Human Services (specific to Medicaid 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 of the following:

a. RI Driver's License or I.D. Card;

b. Birth Certificate;

c. Any other official local, state, or federal document which indicates verified date of birth.

2. Residence: One of the following:

a. Rhode Island Divers License or I.D. Card;

b. Any other official document which indicates permanent residence, i.e. utility bill, tax return, etc.

3. Income: A combination of the following is sufficient to document all income 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 of the above shall constitute acceptable documentation of income.

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 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".

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.

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