

**Rules & Regulations Governing
The Home and Community Care Program
For Elderly Persons**

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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; (b) duplication or overlap with other state regulations; and significant economic impact. No alternative approach was identified; nor any duplication or overlap.

200. Program Authority

The Home and Community Care Program is authorized by, and these regulations are promulgated under, the authority of 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 Title VI of the Civil Rights Act of 1964; the Rhode Island Executive Order No. 92-2, dated January 23, 1992 and entitled “Compliance with the Americans with Disabilities Act”; the United States Executive Order No. 11246 entitled “Equal Employment Opportunity”; United States Department of Labor Regulations; Title V of the Rehabilitation Act of 1973, as amended; the 1990 Americans With Disabilities Act; R.I.G.L. § 42-87, which states that “Discrimination” includes those acts prohibited on the basis of race by 42 U.S.C. #1981, 1983 and those on the basis of handicap by 29 U.S.C. #794 and those on the basis of disability by U.S.C. #12100 *et seq.* and U.S.C. #12101 *et seq.*, and those on the basis of handicap by R.I.G.L. § 28-5; and the Rhode Island Fair Employment Practices Act.

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 & Regulations, the following words and phrases shall mean:

1. “Adult day services program” means a community-based group program licensed by the Department of Elderly Affairs designed to meet the physical, psychological and social needs of adults with impairments through individual plans of care. These structured, comprehensive, nonresidential programs provide a variety of health, social, and related support services in a protective setting. By supporting families and other caregivers, adult day services enable participants to live in the community. Adult day services programs employ an interdisciplinary team to assess the needs of each participant and to design and deliver integrated programs and services to meet those needs. Participants attend on a planned basis.
2. “Assisted living residences” means a publicly or privately operated residence that provides directly or indirectly by means of contracts or arrangements personal assistance to meet the resident’s changing needs and preferences, lodging, and meals to two (2) or more adults who are unrelated to the licensee or administrator, excluding however, any privately operated establishment or facility licensed pursuant to chapter 23-17 of the General Laws of Rhode Island, as amended, and those facilities licensed by or under the jurisdiction of the Department of Mental Health, Retardation and Hospitals, the Department of Children, Youth and Families, or any other state agency. Assisted living residences include sheltered care homes and board and care residences or any other entity by any other name providing the above services which meet the definition of assisted living residence.
3. “Case management agency” means a community-based agency certified by the Department of Elderly Affairs that coordinates and links care across community-based health and social services organizations. Case management agencies identify and secure the necessary resources, equipment, and supplies from formal and informal sources including professionals, paraprofessionals, volunteers, family and friends.
4. “Department” means the Rhode Island Department of Elderly Affairs.
5. “Director” means the Director of the Department of Elderly Affairs.
6. “Home and community care services” means arranging or providing directly, or through contract arrangement, adult day and home health aide/homemaker services.

7. “Home care agency” means any agency licensed by the Department of Health as a “home nursing provider” and/or “home care provider” under the provisions of chapter 23-17 of the General Laws of Rhode Island, as amended.
8. “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.
9. “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.
10. “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.
11. “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 under this chapter;
 - 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;
 - h. workers’ compensation;
 - i. the gross amount of “loss of time” insurance.

“Income” does 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.

12. “Long-term care ombudsperson” means the person or persons designated by the Director of the Department of Elderly Affairs 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.
13. “Respite care services” means temporary care given inside or outside the home of a client who cannot entirely care for themselves and thereby offers relief to caregivers. For the purposes of these rules and regulations, these services are provided by an agency funded by the Department of Elderly Affairs to provide respite care services.

SECTION II. PURPOSE AND SERVICES AVAILABLE

100. Purpose

The purpose of the Home and Community Care Services to the Elderly 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 in the least restrictive environment of choice. It is the intent of this program to prevent or delay institutionalization.

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, case management, 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.

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 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 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. Applicants must also be assessed and determined to be in need of the assistance provided by the Home and Community Care Services for the Elderly 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 the income eligibility for persons eligible under section 42-66.2-5(1)(i) and (2) (i) for the Rhode Island Pharmaceutical Assistance to the Elderly Program (RIPAE); 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 the income eligibility for persons eligible under section 42-66.2-5(1)(i) and (2) (i) for the Rhode Island Pharmaceutical Assistance to the Elderly Program. Persons who meet the eligibility requirement of this subsection shall be eligible for the co-payment portion as set forth in section 42-66.3-5.

Availability of services under Part II of the Home and Community Care Services for the Elderly Program is dependent upon appropriation of funds by the Rhode Island General Assembly. Persons meeting the eligibility requirements of Part II shall be eligible for the co-payment portion of the Home and Community Care Services for the Elderly 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.

Clients determined eligible under Section V, Part II of these rules and regulations shall be assigned a fixed payment per unit of service based on their income level.

As of July 1, 2005, Income Level 1 for Individuals was up to \$9,570 and Income Level 2 was \$9,571 to \$17,987; and Income Level 1 for members of a Couple was up to \$12,830 and Income Level 2 was \$12,831 to \$22,486.

Maximum income caps for this program shall be adjusted annually on July 1 by the current Social Security cost of living adjustment (COLA), as established by the federal government. In 2006 the COLA was 4.1 percent (4.1%).

The client co-payment shall be per hour of homemaker/home health service or per day of adult day services.

FY 2006 Client Co-Payments

	<u>Adult Day Care</u>	<u>Home Care</u>
<u>Level 1</u>	\$5.50/day	\$3.00/hour
<u>Level 2</u>	\$9.00/day	\$5.50/hour

The amount of these co-payments shall be determined by the Department. The Department shall present, for review and comment, any proposed change in these co-payment amounts at a meeting of the Home and Community Care Services Advisory Committee at least ninety (90) days prior to the implementation of the change.

All client payments under this program shall be paid directly to a vendor(s) of service(s).

SECTION V. PROGRAM ELIGIBILITY AND DURATION OF ELIGIBILITY

100. Program Eligibility

The Department and its delegate agencies shall utilize the DEA-approved assessment form contained in the DEA Rules, Regulations and Standards for Certification of Case Management Agencies which shall serve as the primary vehicle for determination of program eligibility. This form includes, but is not 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 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, upon request, written documentation of all information included on the application form.

Such application form shall be made available to the Department and its delegate agencies.

The Department 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 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
- 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 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 XI, Appeal Procedures, of these rules and regulations).

The following documentation shall be accepted as verification of age, residence, and income under the Co-Pay 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 Home and Community Care 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 VIII shall remain eligible for a period on 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.
- b. The client is no longer in need of the services of this program.
- c. The Department 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 Home and Community Services for the Elderly 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 on a standard denial form developed by the Department. 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.

b. Procedure for Appeal

1. Applicants shall contact the Department Hearing Officer to request an appeal. The Department Hearing Officer shall be a Department administrative employee who is not responsible for administration of the Home and Community Care Services 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.
3. The applicant must contact the Department within ninety (90) days of the date of the denial letter from the Department. 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 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 hereby established for the purpose of advising the Director relative to the needs and concerns of home and community care recipients of Home and Community Care Services for the Elderly 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 of Elderly Affairs, 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 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 of Elderly Affairs to provide technical or other assistance as it may deem necessary to accomplish its purpose.

All departments 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 this chapter.