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September 23, 2020

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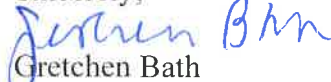
RE: Proposed changes to 210-RICR-50-10-2 & extension of emergency rules


Dear Ms. Bell:

On 8/26 OHHS issued public notice of proposed changes to the above rule, advising that it intended to include provisions allowing PCAs who sign a particular attestation form to be temporarily paid. Nothing in the notice mentioned that OHHS was also deleting Attachment 1 (and references to it) from the regulations, but the copy of the proposed rule issued with the 8/26 email to interested parties omitted the rule's references to Attachment 1. And on 8/31, when issuing notice it was extending the duration of emergency rulemaking, OHHS appended a copy of proposed 50-10-2.9.3 in which all references to Attachment 1 are actually crossed out in yellow highlighting.

Perhaps this was unintentional, but if in fact OHHS proposes to delete Attachment 1 (and references to it) from these budget rules, the amendment would be invalid for failure to have provided public notice of that change. Additionally, using the 8/31 pro forma notice of the 60 day extensions of emergency rules, rather than the APA-required notice-and-comment procedure, to promulgate the change would violate the APA. Finally, I want to note that in 2012, after meetings and negotiations with advocates, and APA notice-and-comment, OHHS promulgated the personal choice regulations explicitly incorporating the Attachment into policy. See attached excerpt from 9/4/12 agency response to public comments. Given that history, I don't believe that OHHS could simply remove Attachment 1, even it is provided proper advance notice and comment. Instead, I believe it would have to provide the public with an explanation justifying the need to change long-standing policy. Thank you for the opportunity to submit comment on the proposed rules.

Sincerely,


Gretchen Bath
Staff Attorney



Executive Office of Health and Human Services
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
57 Howard Avenue, LP Building
Cranston, RI 02920

TO: Interested Parties

FROM: Elena Nicolella
Medicaid Director, EOHHS

DATE: September 4, 2012

SUBJECT: Medicaid Personal Choice Program: Response to Public Comments

Thank you for your comments with regard to the Executive Office of Health and Human Services' (EOHHS) proposed changes to the Medicaid Personal Choice Program (PCP), effective August 1, 2012. The EOHHS takes into consideration all comments received. We have received all of the comments and are now responding in accordance with RIGL Section 42-35-1 et al.

These rules were first advertised for promulgation with the Administrative Procedures Act (Title 42, Chapter 35 of the Rhode Island General Law) on October 6, 2011 and a Public Hearing was held on October 27, 2011. After careful review of the comments received, additional changes and clarifications were made to these rules by the EOHHS. Subsequently, the EOHHS re-advertised these rules for promulgation on June 11, 2012 and a second Public Hearing was held on June 21, 2012. These rules are accessible through the RI Secretary of State's Rules and Regulations Search Interface (<http://sos.ri.gov/rules/>).

In response to public comments, the EOHHS has clarified language and made the following revisions to the original proposal. There are comments that were submitted to the EOHHS which continue to be under review by the department. Listed below are the questions and issues of concern with the EOHHS' response.

1. **Issue:** The EOHHS was asked to delay the filing of final rules until January or February 2012.

Response: The EOHHS has reviewed this concern and delayed the filing of the final rule. The Medicaid Personal Choice program became final on August 1, 2012.

2. **Issue:** The EOHHS was asked to explain the new applied income calculation.

Response: The EOHHS has not changed the applied income calculation at this time. The applied income calculation is now contained in the final rule.

6. **Issue:** The EOHHS was asked if the Level of Care and Advance Determination can be determined prior to a full application?

Response: The individual's appropriate level of care can only be determined at the time of application. However an Advance Determination can be determined prior to the full application.

7. **Issue:** The EOHHS was asked to amend the Rules to include the calculation used to determine the budget and the provisions used to develop the service plan.

Response: The EOHHS has reviewed this request and has amended the Medicaid Personal Choice Program Rules to include the levels of assistance, the functional characteristics for each ADL/IADL, the activity and time allotments, the ADL/IADL multipliers used in the budget calculation, and the provisions used in the development of the service plan.

8. **Issue:** The EOHHS was asked to amend the rules to require that the applicant/recipient receive adequate and formal written notice of the final approved budget determination from the EOHHS/DHS and afford the applicant/recipient the right to due process in disputing the "initial budget determination and the facts / findings underlying it. There is concern that there is a violation of RI Statute (40/8/7) (42CFR431.220) by denying the applicants appeal of the original budget amount and that the "request for and adjustment" is insufficient..

Response: The EOHHS is in agreement that the approved budget is a benefit.

The Medicaid Personal Choice Program (PCP) Rules state:

"if the PCP beneficiary is not in agreement with the initial budget, the PCP beneficiary can request an adjustment with the Service Advisor to increase the budget. If the beneficiary disagrees with the Service Advisor's decision on the adjustment to the budget, the beneficiary can appeal the decision with the Medicaid Agency."

The recipient is afforded Appeal Rights regarding the budget and the notice of the budget. The Medicaid Personal Choice Program Rule has been amended to include a reference to the DHS General Provisions Rule, Section 110, Complaints and Hearings.

9. **Issue:** The EOHHS was asked to clarify the specifics of the "request for an adjustment". Is the applicant provided written notice of the right to request an adjustment when the initial budget is issued? To whom does the applicant make a request for adjustment? What is the time period for requesting an adjustment? Who reviews the request for adjustment and makes a determination on the request? Is the decision on the request for an adjustment provided to the applicant in writing? Does the decision on the request for adjustment include an explanation of the right to hearing?