

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO HUMAN SERVICES - MEDICAL ASSISTANCE

Introduced By: Senators Goldin, Satchell, Miller, Crowley, and DiPalma

Date Introduced: February 16, 2017

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 40-8-19 of the General Laws in Chapter 40-8 entitled "Medical
2 Assistance" is hereby amended to read as follows:

3 **40-8-19. Rates of payment to nursing facilities.**

4 (a) Rate reform.

5 (1) The rates to be paid by the state to nursing facilities licensed pursuant to chapter 17 of
6 title 23, and certified to participate in the Title XIX Medicaid program for services rendered to
7 Medicaid-eligible residents, shall be reasonable and adequate to meet the costs that must be
8 incurred by efficiently and economically operated facilities in accordance with 42 U.S.C. §
9 1396a(a)(13). The executive office of health and human services ("executive office") shall
10 promulgate or modify the principles of reimbursement for nursing facilities in effect as of July 1,
11 2011, to be consistent with the provisions of this section and Title XIX, 42 U.S.C. § 1396 et seq.,
12 of the Social Security Act.

13 (2) The executive office shall review the current methodology for providing Medicaid
14 payments to nursing facilities, including other long-term-care services providers, and is
15 authorized to modify the principles of reimbursement to replace the current cost-based
16 methodology rates with rates based on a price-based methodology to be paid to all facilities with
17 recognition of the acuity of patients and the relative Medicaid occupancy, and to include the
18 following elements to be developed by the executive office:

19 (i) A direct-care rate adjusted for resident acuity;

- 1 (ii) An indirect-care rate comprised of a base per diem for all facilities;
- 2 (iii) A rearray of costs for all facilities every three (3) years beginning October, 2015, that
3 may or may not result in automatic per diem revisions;
- 4 (iv) Application of a fair-rental-value system;
- 5 (v) Application of a pass-through system; and
- 6 (vi) Adjustment of rates by the change in a recognized national nursing home inflation
7 index to be applied on October 1st of each year, beginning October 1, 2012. This adjustment will
8 not occur on October 1, 2013, or October 1, 2015, but will occur on April 1, 2015. Said inflation
9 index shall be applied without regard for the transition factor in subsection (b)(2).

10 For purposes of October 1, 2016, adjustment only, any rate increase that results from
11 application of the inflation index to subparagraphs (a)(2)(i) and (a)(2)(ii) shall be dedicated to
12 increase compensation for direct-care workers in the following manner: Not less than 85% of this
13 aggregate amount shall be expended to fund an increase in wages, benefits, or related employer
14 costs of direct-care staff of nursing homes. For purposes of this section, direct-care staff shall
15 include registered nurses (RNs), licensed practical nurses (LPNs), certified nursing assistants
16 (CNAs), certified medical technicians, housekeeping staff, laundry staff, dietary staff, or other
17 similar employees providing direct care services; provided, however, that this definition of direct-
18 care staff shall not include: (i) RNs and LPNs who are classified as "exempt employees" under
19 the Federal Fair Labor Standards Act (29 U.S.C. § 201 et seq.); or (ii) CNAs, certified medical
20 technicians, RNs, or LPNs who are contracted, or subcontracted, through a third-party vendor or
21 staffing agency. By July 31, 2017, nursing facilities shall submit to the secretary, or designee, a
22 certification that they have complied with the provisions of this subparagraph (a)(2)(vi) with
23 respect to the inflation index applied on October 1, 2016. Any facility that does not comply with
24 terms of such certification shall be subjected to a clawback, paid by the nursing facility to the
25 state, in the amount of increased reimbursement subject to this provision that was not expended in
26 compliance with that certification.

27 (vii) Beginning on October 1, 2017, any rate increase that results from application of the
28 inflation index to subsections (a)(2)(i) and (a)(2)(ii) of this section shall be dedicated to increase
29 compensation for direct care workers by no less than seventy cents (\$.70) per hour on October 1
30 of each year. For purposes of this subsection, direct care staff shall include registered nurses
31 (RNs), licensed practical nurses (LPNs), certified nursing assistants (CNAs), certified medical
32 technicians, housekeeping staff, laundry staff, dietary staff or other similar employees providing
33 direct care services; provided, however that this definition of direct care staff shall not include:

34 (A) RNs and LPNs who are classified as "exempt employees" under the Federal Fair

1 Labor Standards Act (29 U.S.C. §201 et seq); or

2 (B) CNAs, certified medical technicians, RNs or LPNs who are contracted or
3 subcontracted through a third-party vendor or staffing agency.

4 By July 31, 2018 and July 31 of each year thereafter, nursing facilities shall submit to the
5 secretary or designee a certification that they have complied with the provisions of subsection
6 (vii) of this section with respect to the inflation index applied on October 1. Any facility that does
7 not comply with terms of such certification shall be subjected to a clawback, paid by the nursing
8 facility to the state, in the amount of increased reimbursement subject to this provision that was
9 not expended in compliance with that certification.

10 (b) Transition to full implementation of rate reform. For no less than four (4) years after
11 the initial application of the price-based methodology described in subdivision (a)(2) to payment
12 rates, the executive office of health and human services shall implement a transition plan to
13 moderate the impact of the rate reform on individual nursing facilities. Said transition shall
14 include the following components:

15 (1) No nursing facility shall receive reimbursement for direct-care costs that is less than
16 the rate of reimbursement for direct-care costs received under the methodology in effect at the
17 time of passage of this act; for the year beginning October 1, 2017, the reimbursement for direct-
18 care costs under this provision will be phased out in twenty-five-percent (25%) increments each
19 year until October 1, 2021, when the reimbursement will no longer be in effect.

20 (2) No facility shall lose or gain more than five dollars (\$5.00) in its total per diem rate
21 the first year of the transition. An adjustment to the per diem loss or gain may be phased out by
22 twenty-five percent (25%) each year; except, however, for the year beginning October 1, 2015,
23 there shall be no adjustment to the per diem gain or loss, but the phase out shall resume
24 thereafter; and

25 (3) The transition plan and/or period may be modified upon full implementation of
26 facility per diem rate increases for quality of care related measures. Said modifications shall be
27 submitted in a report to the general assembly at least six (6) months prior to implementation.

28 (4) Notwithstanding any law to the contrary, for the twelve-month (12) period beginning
29 July 1, 2015, Medicaid payment rates for nursing facilities established pursuant to this section
30 shall not exceed ninety-eight percent (98%) of the rates in effect on April 1, 2015.

31 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO HUMAN SERVICES - MEDICAL ASSISTANCE

1 This act would raise the hourly rate of direct care staff by at least seventy cents (\$.70) as
2 of October 1, 2017 and on October 1 of each year with certification of compliance on each July
3 31 thereafter subject to clawback provisions for noncompliance.

4 This act would take effect upon passage.

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