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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO HEALTH AND SAFETY -- RIGHTS OF NURSING HOME PATIENTS

Introduced By: Representatives Serpa, Shekarchi, and Lima

Date Introduced: February 26, 2015

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 23-17.5-17 of the General Laws in Chapter 23-17.5 entitled "Rights
2 of Nursing Home Patients" is hereby amended to read as follows:

3 **23-17.5-17. Transfer to another facility.** -- (a) Before transferring a patient to another
4 facility or level of care within a facility, the patient shall be informed of the need for the transfer
5 and of any alternatives to the transfer.

6 (b) A patient shall be transferred or discharged only for medical reasons, or for the
7 patient's welfare or that of other patients or for nonpayment of the patient's stay. A facility
8 seeking to discharge a patient for nonpayment of the patient's stay must, if the patient has been a
9 patient of the facility for thirty (30) days or longer, provide the patient and, if known, a family
10 member or legal representative of the patient, with written notice of the proposed discharge thirty
11 (30) days in advance of the discharge.

12 (c) The patient may file an appeal of the proposed discharge with the long-term care
13 ombudsperson of the department of elderly affairs, and if the appeal is received by the
14 ombudsperson within ten (10) days after the date of written notice, the patient may remain in the
15 facility until the decision of the ombudsperson. For appeals where the patient remains in the
16 facility:

17 (1) Any hearing on the appeal shall be scheduled no later than thirty (30) days after the
18 receipt by the state agency of the request for appeal;

19 (2) No more than one request for continuance by the patient shall be permitted and, if

1 granted, the hearing on the appeal must be rescheduled for a date and time no later than forty (40)
2 days after the receipt by the state agency of the request for appeal; and

3 (3) The decision of the ombudsperson shall be rendered as soon as possible, but in any
4 event within five (5) days after the date of the hearing.

5 ~~(e)~~(d) Reasonable advance notice of transfers to health care facilities other than hospitals
6 shall be given to ensure orderly transfer or discharge and those actions shall be documented in the
7 medical record.

8 ~~(d)~~(e) In the event that a facility seeks a variance from the required thirty (30) day notice
9 of closure of the facility, reasonable advance notice of the hearing for the variance shall be given
10 by the facility to the patient, his or her guardian, or relative so appointed or elected to be his or
11 her decision-maker, and an opportunity to be present at the hearing shall be granted to the
12 designated person.

13 ~~(e)~~(f) In the event of the voluntary closure of a facility, which closure is the result of a
14 variance from the required thirty (30) day notice of closure, granted by the director of the
15 department of health, reasonable advance notice of the closure shall be given by the facility to the
16 patient, his or her guardian, or relative so appointed or elected to be his or her decision-maker.

17 (g) Nothing herein shall be construed to relieve a patient from any obligation to pay for
18 the patient's stay in a facility.

19 SECTION 2. Chapter 40-8 of the General Laws entitled "Medical Assistance" is hereby
20 amended by adding thereto the following sections:

21 **40-8-6.1. Nursing facility care during pendency of application.** – (a) Definitions. For
22 purposes of this section, the following terms shall have the meanings indicated:

23 (1) "Applied income" means the amount of income a Medicaid beneficiary is required to
24 contribute to the cost of his or her care.

25 (2) "Authorized representative" means an individual who signs an application for
26 Medicaid benefits on behalf of the Medicaid applicant.

27 (3) "Complete application" means an application for Medicaid benefits filed by or on
28 behalf of an individual receiving care and services from a nursing facility, including attachments
29 and supplemental information as necessary, which provides sufficient information for the director
30 or designee to determine the applicant's eligibility for coverage. An application shall not be
31 disqualified from status as a complete application hereunder except for failure on the part of the
32 Medicaid applicant, his or her authorized representative, or the nursing facility to provide
33 necessary information or documentation, or to take any other action necessary to make the
34 application a complete application.

1 (4) "Medicaid applicant" means an individual who is receiving care in a nursing facility
2 during the pendency of an application for Medicaid benefits.

3 (5) "Nursing facility" means a nursing facility licensed under chapter 17 of title 23, which
4 is a participating provider in the Rhode Island Medicaid program.

5 (6) "Uncompensated care" means care and services provided by a nursing facility to a
6 Medicaid applicant without receiving compensation therefor from Medicaid, Medicare, the
7 Medicaid applicant, or other source. The acceptance of any payment representing actual or
8 estimated applied income shall not disqualify the care and services provided from qualifying as
9 uncompensated care.

10 (b) Uncompensated care during pendency of an application or benefits. A nursing facility
11 may not discharge a Medicaid applicant for non-payment of the facility's bill during the pendency
12 of a complete application; nor may a nursing facility charge a Medicaid applicant for care
13 provided during the pendency of a complete application, except for an amount representing the
14 estimated applied income. A nursing facility may discharge a Medicaid applicant for non-
15 payment of the facility's bill during the pendency of an application for Medicaid coverage that is
16 not a complete application, but only if the nursing facility has provided the patient (and his or her
17 authorized representative, if known) with thirty (30) days' written notice of its intention to do so,
18 and the application remains incomplete during that thirty (30) day period.

19 (c) Notice of application status. When a nursing facility is providing uncompensated care
20 to a Medicaid applicant, then the nursing facility may inform the director or designee of its status,
21 and the director or designee shall thereafter inform the nursing facility of any decision on the
22 application at the time the decision is rendered and, if coverage is approved, of the date that
23 coverage will begin. In addition, a nursing facility providing uncompensated care to a Medicaid
24 applicant may inquire of the director or designee as to the status of that individual's application,
25 and the director or designee shall respond within five (5) business days as follows:

26 (1) Without release – If the nursing facility has not obtained a signed release authorizing
27 disclosure of information to the facility, the director or designee must provide the following
28 information only, in writing:

29 (i) Whether or not the application has been approved;

30 (ii) The identity of any authorized representative; and

31 (iii) If the application has not yet been decided, whether or not the application is a
32 complete application.

33 (2) With release – If the nursing facility has obtained a signed release, the director or
34 designee must additionally provide any further information requested by the nursing facility, to

1 the extent that the release permits its disclosure.

2 **40-8-20.2. Support for certain patients of nursing facilities.** – (a) Definitions. For
3 purposes of this section:

4 (1) "Applied income" means the amount of income a Medicaid beneficiary is required to
5 contribute to the cost of his or her care.

6 (2) "Authorized individual" means a person who has authority over the income of a
7 patient of a nursing facility such as a person who has been given or has otherwise obtained
8 authority over a patient's bank account, has been named as or has rights as a joint account holder,
9 or is a fiduciary as defined in this section:

10 (3) "Costs of care" means the costs of providing care to a patient of a nursing facility,
11 including nursing care, personal care, meals, transportation and any other costs, charges, and
12 expenses incurred by a nursing facility in providing care to a patient. Costs of care shall not
13 exceed the customary rate the nursing facility charges to a patient who pays for his or her care
14 directly rather than through a governmental or other third-party payor.

15 (4) "Fiduciary" means a person to whom power or property has been formally entrusted
16 for the benefit of another such as an attorney-in-fact, legal guardian, trustee, or representative
17 payee.

18 (5) "Nursing facility" means a nursing facility licensed under chapter 17 of title 23, which
19 is a participating provider in the Rhode Island Medicaid program.

20 (6) "Penalty period" means the period of Medicaid ineligibility imposed pursuant to 42
21 U.S.C. 1396p(c), as amended from time to time, on a person whose assets have been transferred
22 for less than fair market value.

23 (7) "Uncompensated care" means care and services provided by a nursing facility to a
24 Medicaid applicant without receiving compensation therefor from Medicaid, Medicare, the
25 Medicaid applicant, or other source. The acceptance of any payment representing actual or
26 estimated applied income shall not disqualify the care and services provided from qualifying as
27 uncompensated care.

28 (b) Penalty period resulting from transfer. Any transfer or assignment of assets resulting
29 in the establishment or imposition of a penalty period shall create a debt that shall be due and
30 owing to a nursing facility for the unpaid costs of care provided during the penalty period to a
31 patient of that facility who has been subject to the penalty period. The amount of the debt
32 established shall not exceed the fair market value of the transferred assets at the time of transfer
33 that are subject of the penalty period. A nursing facility may bring an action to collect a debt for
34 the unpaid costs of care given to a patient who has been subject to a penalty period, against either

1 the transferor or the transferee, or both. The provisions of this section shall not affect other rights
2 or remedies of the parties.

3 (c) Applied income. A nursing facility may provide written notice to a patient who is a
4 Medicaid recipient and any authorized individual of that patient of:

5 (1) The amount of applied income due;

6 (2) The recipient's legal obligation to pay the applied income to the nursing facility; and

7 (3) That the recipient's failure to pay applied income due to a nursing facility not later
8 than thirty (30) days after receiving such notice from the nursing facility may result in a court
9 action to recover the amount of applied income due.

10 A nursing facility that is owed applied income may, in addition to any other remedies
11 authorized under law, bring a claim to recover the applied income against a patient and any
12 authorized individual. If a court of competent jurisdiction determines, based upon clear and
13 convincing evidence, that a defendant willfully failed to pay or withheld applied income due and
14 owing to a nursing facility for more than thirty (30) days after receiving notice pursuant to
15 subsection (d) of this section, the court may award the amount of the debt owed, court costs and
16 reasonable attorneys' fees to the nursing facility.

17 (d) Effects. Nothing contained in this section shall prohibit or otherwise diminish any
18 other causes of action possessed by any such nursing facility. The death of the person receiving
19 nursing facility care shall not nullify or otherwise affect the liability of the person or persons
20 charged with the costs of care rendered or the applied income amount as referenced in this
21 section.

22 SECTION 3. Chapter 15-10 of the General Laws entitled "Support of Parents" is hereby
23 amended by adding thereto the following section:

24 **15-10-8. Support for certain patients of nursing facilities.** – The uncompensated costs
25 of care provided by a licensed nursing facility to any person may be recovered by the nursing
26 facility from any child of that person who is above the age of eighteen (18) years, to the extent
27 that the child previously received a transfer of any interests or assets from the person receiving
28 such care, which transfer resulted in a period of Medicaid ineligibility imposed pursuant to 42
29 U.S.C. 1396p(c), as amended from time to time, on a person whose assets have been transferred
30 for less than fair market value.

31 Recourse hereunder shall be limited to the fair market value of the interests or assets
32 transferred at the time of transfer. For the purposes of this section, "the costs of care" means the
33 costs of providing care, including nursing care, personal care, meals, transportation and any other
34 costs, charges, and expenses incurred by the facility. Costs of care shall not exceed the customary

1 rate the nursing facility charges to a patient who pays for his or her care directly rather than
2 through a governmental or other third-party payor. Nothing contained in this section shall prohibit
3 or otherwise diminish any other causes of action possessed by any such nursing facility. The
4 death of the person receiving nursing facility care shall not nullify or otherwise affect the liability
5 of the person or persons charged with the costs of care hereunder.

6 SECTION 4. Section 40-5-13 of the General Laws in Chapter 40-5 entitled "Support of
7 the Needy" is hereby amended to read as follows:

8 **40-5-13. Obligation of kindred for support.** – (a) The kindred of any poor person, if
9 any he or she shall have in the line or degree of father or grandfather, mother or grandmother,
10 children or grandchildren, by consanguinity, or children by adoption, living within this state and
11 of sufficient ability, shall be holden to support the pauper in proportion to their ability.

12 (b) The uncompensated costs of care provided by a licensed nursing facility to any person
13 may be recovered by the nursing facility from any person who is obligated to provide support to
14 that patient under subsection (a) of this section, to the extent that the individual so obligated
15 received a transfer of any interests or assets from the patient receiving such care, which transfer
16 resulted in a period of Medicaid ineligibility imposed pursuant to 42 U.S.C. 1396p(c), as
17 amended from time to time, on a person whose assets have been transferred for less than fair
18 market value.

19 Recourse hereunder shall be limited to the fair market value of the interests or assets
20 transferred at the time of transfer. For the purposes of this section, "the costs of care" means the
21 costs of providing care, including nursing care, personal care, meals, transportation and any other
22 costs, charges, and expenses incurred by the facility. Costs of care shall not exceed the customary
23 rate the nursing facility charges to a patient who pays for his or her care directly rather than
24 through a governmental or other third-party payor. Nothing contained in this section shall prohibit
25 or otherwise diminish any other causes of action possessed by any such nursing facility. The
26 death of the person receiving nursing facility care shall not nullify or otherwise affect the liability
27 of the person or persons charged with the costs of care hereunder.

28 SECTION 5. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO HEALTH AND SAFETY -- RIGHTS OF NURSING HOME PATIENTS

- 1 This act would provide appeal rights to patients who are being discharged from a nursing
- 2 home for nonpayment of charges. The uncompensated costs of care provided by a licensed
- 3 nursing facility may in some cases be recovered from a child of that patient.
- 4 This act would take effect upon passage.

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