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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO HUMAN SERVICES - MEDICAL ASSISTANCE

Introduced By: Senator Maryellen Goodwin

Date Introduced: March 14, 2019

Referred To: Senate Health & Human Services

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 Title XIX of the Social Security Act 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 rerearray 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 1 of each year, beginning October 1, 2012. This adjustment will
8 not occur on October 1, 2013, October 1, 2014, or October 1, 2015, but will occur on April 1,
9 2015. The adjustment of rates will also not occur on October 1, 2017, or October 1, 2018.
10 Effective July 1, 2018, rates paid to nursing facilities from the rates approved by the Centers for
11 Medicare and Medicaid Services and in effect on October 1, 2017, both fee-for-service and
12 managed care, will be increased by one and one-half percent (1.5%) and further increased by one
13 percent (1%) on October 1, 2018. Said inflation index shall be applied without regard for the
14 transition factors in subsections (b)(1) and (b)(2). For purposes of October 1, 2016, adjustment
15 only, any rate increase that results from application of the inflation index to subsections (a)(2)(i)
16 and (a)(2)(ii) shall be dedicated to increase compensation for direct-care workers in the following
17 manner: Not less than 85% of this aggregate amount shall be expended to fund an increase in
18 wages, benefits, or related employer costs of direct-care staff of nursing homes. For purposes of
19 this section, direct-care staff shall include registered nurses (RNs), licensed practical nurses
20 (LPNs), certified nursing assistants (CNAs), certified medical technicians, housekeeping staff,
21 laundry staff, dietary staff, or other similar employees providing direct-care services; provided,
22 however, that this definition of direct-care staff shall not include: (i) RNs and LPNs who are
23 classified as "exempt employees" under the Federal Fair Labor Standards Act (29 U.S.C. § 201 et
24 seq.); or (ii) CNAs, certified medical technicians, RNs, or LPNs who are contracted, or
25 subcontracted, through a third-party vendor or staffing agency. By July 31, 2017, nursing
26 facilities shall submit to the secretary, or designee, a certification that they have complied with
27 the provisions of this subsection (a)(2)(vi) with respect to the inflation index applied on October
28 1, 2016. Any facility that does not comply with terms of such certification shall be subjected to a
29 clawback, paid by the nursing facility to the state, in the amount of increased reimbursement
30 subject to this provision that was not expended in compliance with that certification.

31 (b) Transition to full implementation of rate reform. For no less than four (4) years after
32 the initial application of the price-based methodology described in subsection (a)(2) to payment
33 rates, the executive office of health and human services shall implement a transition plan to
34 moderate the impact of the rate reform on individual nursing facilities. Said transition shall

1 include the following components:

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

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

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

15 (4) Notwithstanding any law to the contrary, for the twelve-month (12) period beginning
16 July 1, 2015, Medicaid payment rates for nursing facilities established pursuant to this section
17 shall not exceed ninety-eight percent (98%) of the rates in effect on April 1, 2015. Consistent
18 with the other provisions of this chapter, nothing in this provision shall require the executive
19 office to restore the rates to those in effect on April 1, 2015, at the end of this twelve-month (12)
20 period.

21 (c) In the event the rearray described in subsection (a)(2)(iii) of this section is not
22 performed as scheduled, nursing facility per diem rates shall be increased by three percent (3%)
23 effective on the date that the rearray was scheduled to take place, which three percent (3%)
24 increase shall be irrespective of and in addition to any inflation index applied pursuant to
25 subsection (a)(2)(vi) of this section.

26 (d) Notwithstanding any provision of this section to the contrary, at any time when the
27 state increases the required minimum wage pursuant to § 28-12-3 or successor statute, the direct
28 care and indirect care components of the Medicaid rates to be paid by the state to nursing
29 facilities under subsections (a)(2)(i) and (a)(2)(ii) of this section shall be increased by the same
30 percentage by which the minimum wage is increased. Such adjustment shall become effective on
31 the date that the minimum wage increase becomes effective, and shall take place irrespective of
32 and in addition to any inflation index applied pursuant to subsection (a)(2)(vi) of this section.

33 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 amend the rate of payment to licensed nursing facilities to provide for an
2 increase by three percent (3%) of the per diem rate for any facility which has not received a
3 rearray of costs of that facility as of the date such rearray was scheduled to be performed. This
4 act would further allow for an increase of payment to the direct care and indirect care components
5 of the Medicaid rates to be paid to the nursing facilities at any time there is an increase in
6 minimum wage. Such increase shall match the percentage by which the minimum wage increases
7 and shall be effective as of the date the minimum wage increase becomes effective.

8 This act would take effect upon passage.

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