

2022 -- H 7860

LC004883

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO HUMAN SERVICES -- MEDICAL ASSISTANCE

Introduced By: Representatives Serpa, and C Lima

Date Introduced: March 04, 2022

Referred To: House 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 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 authorized  
15 to modify the principles of reimbursement to replace the current cost-based methodology rates with  
16 rates based on a price-based methodology to be paid to all facilities with recognition of the acuity  
17 of patients and the relative Medicaid occupancy, and to include the following elements to be  
18 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~~ A rearray of costs for all facilities every  
4 three (3) years beginning October 2022 utilizing data from the most recent finalized year of facility  
5 cost report. The per diem rate components deferred in subsections (a)(2)(i) and (a)(2)(ii) of this  
6 section shall be adjusted accordingly to reflect changes in direct and indirect care costs since the  
7 pervious array;

8 (iv) Application of a fair-rental value system;  
9 (v) Application of a pass-through system; and

10 (vi) Adjustment of rates by the change in a recognized national nursing home inflation  
11 index to be applied on October 1 of each year, beginning October 1, 2012. This adjustment will not  
12 occur on October 1, 2013, October 1, 2014, or October 1, 2015, but will occur on April 1, 2015.  
13 The adjustment of rates will also not occur on October 1, 2017, October 1, 2018, and October 1,  
14 2019. Effective July 1, 2018, rates paid to nursing facilities from the rates approved by the Centers  
15 for Medicare and Medicaid Services and in effect on October 1, 2017, both fee-for-service and  
16 managed care, will be increased by one and one-half percent (1.5%) and further increased by one  
17 percent (1%) on October 1, 2018, and further increased by one percent (1%) on October 1, 2019.  
18 In addition to the annual nursing home inflation index adjustment, there shall be a base rate staffing  
19 adjustment of one-half percent (0.5%) on October 1, 2021, one percent (1.0%) on October 1, 2022,  
20 and one and one-half percent (1.5%) on October 1, 2023. The inflation index shall be applied  
21 without regard for the transition factors in subsections (b)(1) and (b)(2). For purposes of October  
22 1, 2016, adjustment only, any rate increase that results from application of the inflation index to  
23 subsections (a)(2)(i) and (a)(2)(ii) shall be dedicated to increase compensation for direct-care  
24 workers in the following manner: Not less than 85% of this aggregate amount shall be expended to  
25 fund an increase in wages, benefits, or related employer costs of direct-care staff of nursing homes.  
26 For purposes of this section, direct-care staff shall include registered nurses (RNs), licensed  
27 practical nurses (LPNs), certified nursing assistants (CNAs), certified medical technicians,  
28 housekeeping staff, laundry staff, dietary staff, or other similar employees providing direct-care  
29 services; provided, however, that this definition of direct-care staff shall not include: (i) RNs and  
30 LPNs who are classified as "exempt employees" under the federal Fair Labor Standards Act (29  
31 U.S.C. § 201 et seq.); or (ii) CNAs, certified medical technicians, RNs, or LPNs who are contracted,  
32 or subcontracted, through a third-party vendor or staffing agency. By July 31, 2017, nursing  
33 facilities shall submit to the secretary, or designee, a certification that they have complied with the  
34 provisions of this subsection (a)(2)(vi) with respect to the inflation index applied on October 1,

1 2016. Any facility that does not comply with terms of such certification shall be subjected to a  
2 clawback, paid by the nursing facility to the state, in the amount of increased reimbursement subject  
3 to this provision that was not expended in compliance with that certification.

4 (3) Commencing on October 1, 2021, eighty percent (80%) of any rate increase that results  
5 from application of the inflation index to subsections (a)(2)(i) and (a)(2)(ii) of this section shall be  
6 dedicated to increase compensation for all eligible direct-care workers in the following manner on  
7 October 1, of each year.

8 (i) For purposes of this subsection, compensation increases shall include base salary or  
9 hourly wage increases, benefits, other compensation, and associated payroll tax increases for  
10 eligible direct-care workers. This application of the inflation index shall apply for Medicaid  
11 reimbursement in nursing facilities for both managed care and fee-for-service. For purposes of this  
12 subsection, direct-care staff shall include registered nurses (RNs), licensed practical nurses (LPNs),  
13 certified nursing assistants (CNAs), certified medication technicians, licensed physical therapists,  
14 licensed occupational therapists, licensed speech-language pathologists, mental health workers  
15 who are also certified nurse assistants, physical therapist assistants, housekeeping staff, laundry  
16 staff, dietary staff or other similar employees providing direct-care services; provided, however  
17 that this definition of direct-care staff shall not include:

18 (A) RNs and LPNs who are classified as "exempt employees" under the federal Fair Labor  
19 Standards Act (29 U.S.C. § 201 et seq.); or

20 (B) CNAs, certified medication technicians, RNs or LPNs who are contracted or  
21 subcontracted through a third-party vendor or staffing agency.

22 (4)(i) By July 31, 2021, and July 31 of each year thereafter, nursing facilities shall submit  
23 to the secretary or designee a certification that they have complied with the provisions of subsection  
24 (a)(3) of this section with respect to the inflation index applied on October 1. The executive office  
25 of health and human services (EOHHS) shall create the certification form nursing facilities must  
26 complete with information on how each individual eligible employee's compensation increased,  
27 including information regarding hourly wages prior to the increase and after the compensation  
28 increase, hours paid after the compensation increase, and associated increased payroll taxes. A  
29 collective bargaining agreement can be used in lieu of the certification form for represented  
30 employees. All data reported on the compliance form is subject to review and audit by EOHHS.  
31 The audits may include field or desk audits, and facilities may be required to provide additional  
32 supporting documents including, but not limited to, payroll records.

33 (ii) Any facility that does not comply with the terms of certification shall be subjected to a  
34 clawback and twenty-five percent (25%) penalty of the unspent or impermissibly spent funds, paid

1 by the nursing facility to the state, in the amount of increased reimbursement subject to this  
2 provision that was not expended in compliance with that certification.

3 (iii) In any calendar year where no inflationary index is applied, eighty percent (80%) of  
4 the base rate staffing adjustment in that calendar year pursuant to subsection (a)(2)(vi) of this  
5 section shall be dedicated to increase compensation for all eligible direct-care workers in the  
6 manner referenced in subsections (a)(3)(i), (a)(3)(i)(A), and (a)(3)(i)(B) of this section.

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

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

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

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

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

29 (c) Rearray adjustments. In the event the rearray described in subsection (a)(2)(iii) of this  
30 section is not performed as scheduled, nursing facility per diem rates shall be increased by three  
31 percent (3%) effective on the date that the rearray was scheduled to take place, which three percent  
32 (3%) increase shall be irrespective of and in addition to any inflation index applied pursuant to  
33 subsection (a)(2)(vi) of this section.

34 (d) Changes to state minimum wage. Notwithstanding any provision in this section to the

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

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO HUMAN SERVICES -- MEDICAL ASSISTANCE

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1           This act would require the executive office of health and human services to adjust, once  
2 every three (3) years the per diem reimbursement to nursing facilities, by taking into consideration  
3 increases in direct and indirect care costs. If the scheduled adjustment does not occur, the per diem  
4 reimbursement rate shall increase by three percent (3%) as of the date of the scheduled adjustment.

5           This act would take effect upon passage.

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