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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 - LONG-TERM CARE  
SERVICES AND FINANCE REFORMS

Introduced By: Senators Seveney, Coyne, and DiPalma

Date Introduced: March 14, 2019

Referred To: Senate Finance

(Dept. of Administration)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 40-8.9-9 of the General Laws in Chapter 40-8.9 entitled "Medical  
2 Assistance - Long-Term Care Service and Finance Reform" is hereby amended to read as  
3 follows:

4 **40-8.9-9. Long-term-care rebalancing system reform goal.**

5 (a) Notwithstanding any other provision of state law, the executive office of health and  
6 human services is authorized and directed to apply for, and obtain, any necessary waiver(s),  
7 waiver amendment(s), and/or state-plan amendments from the secretary of the United States  
8 Department of Health and Human Services, and to promulgate rules necessary to adopt an  
9 affirmative plan of program design and implementation that addresses the goal of allocating a  
10 minimum of fifty percent (50%) of Medicaid long-term-care funding for persons aged sixty-five  
11 (65) and over and adults with disabilities, in addition to services for persons with developmental  
12 disabilities, to home- and community-based care; provided, further, the executive office shall  
13 report annually as part of its budget submission, the percentage distribution between institutional  
14 care and home- and community-based care by population and shall report current and projected  
15 waiting lists for long-term-care and home- and community-based care services. The executive  
16 office is further authorized and directed to prioritize investments in home- and community-based  
17 care and to maintain the integrity and financial viability of all current long-term-care services  
18 while pursuing this goal.

1 (b) The reformed long-term-care system rebalancing goal is person centered and  
2 encourages individual self-determination, family involvement, interagency collaboration, and  
3 individual choice through the provision of highly specialized and individually tailored home-  
4 based services. Additionally, individuals with severe behavioral, physical, or developmental  
5 disabilities must have the opportunity to live safe and healthful lives through access to a wide  
6 range of supportive services in an array of community-based settings, regardless of the  
7 complexity of their medical condition, the severity of their disability, or the challenges of their  
8 behavior. Delivery of services and supports in less costly and less restrictive community settings,  
9 will enable children, adolescents, and adults to be able to curtail, delay, or avoid lengthy stays in  
10 long-term care institutions, such as behavioral health residential-treatment facilities, long-term-  
11 care hospitals, intermediate-care facilities, and/or skilled nursing facilities.

12 (c) Pursuant to federal authority procured under § 42-7.2-16, the executive office of  
13 health and human services is directed and authorized to adopt a tiered set of criteria to be used to  
14 determine eligibility for services. Such criteria shall be developed in collaboration with the state's  
15 health and human services departments and, to the extent feasible, any consumer group, advisory  
16 board, or other entity designated for such purposes, and shall encompass eligibility  
17 determinations for long-term-care services in nursing facilities, hospitals, and intermediate-care  
18 facilities for persons with intellectual disabilities, as well as home- and community-based  
19 alternatives, and shall provide a common standard of income eligibility for both institutional and  
20 home- and community-based care. The executive office is authorized to adopt clinical and/or  
21 functional criteria for admission to a nursing facility, hospital, or intermediate-care facility for  
22 persons with intellectual disabilities that are more stringent than those employed for access to  
23 home- and community-based services. The executive office is also authorized to promulgate rules  
24 that define the frequency of re-assessments for services provided for under this section. Levels of  
25 care may be applied in accordance with the following:

26 (1) The executive office shall continue to apply the level of care criteria in effect on June  
27 30, 2015, for any recipient determined eligible for and receiving Medicaid-funded, long-term  
28 services in supports in a nursing facility, hospital, or intermediate-care facility for persons with  
29 intellectual disabilities on or before that date, unless:

30 (a) The recipient transitions to home- and community-based services because he or she  
31 would no longer meet the level of care criteria in effect on June 30, 2015; or

32 (b) The recipient chooses home- and community-based services over the nursing facility,  
33 hospital, or intermediate-care facility for persons with intellectual disabilities. For the purposes of  
34 this section, a failed community placement, as defined in regulations promulgated by the

1 executive office, shall be considered a condition of clinical eligibility for the highest level of care.  
2 The executive office shall confer with the long-term-care ombudsperson with respect to the  
3 determination of a failed placement under the ombudsperson's jurisdiction. Should any Medicaid  
4 recipient eligible for a nursing facility, hospital, or intermediate-care facility for persons with  
5 intellectual disabilities as of June 30, 2015, receive a determination of a failed community  
6 placement, the recipient shall have access to the highest level of care; furthermore, a recipient  
7 who has experienced a failed community placement shall be transitioned back into his or her  
8 former nursing home, hospital, or intermediate-care facility for persons with intellectual  
9 disabilities whenever possible. Additionally, residents shall only be moved from a nursing home,  
10 hospital, or intermediate-care facility for persons with intellectual disabilities in a manner  
11 consistent with applicable state and federal laws.

12 (2) Any Medicaid recipient eligible for the highest level of care who voluntarily leaves a  
13 nursing home, hospital, or intermediate-care facility for persons with intellectual disabilities shall  
14 not be subject to any wait list for home- and community-based services.

15 (3) No nursing home, hospital, or intermediate-care facility for persons with intellectual  
16 disabilities shall be denied payment for services rendered to a Medicaid recipient on the grounds  
17 that the recipient does not meet level of care criteria unless and until the executive office has:

18 (i) Performed an individual assessment of the recipient at issue and provided written  
19 notice to the nursing home, hospital, or intermediate-care facility for persons with intellectual  
20 disabilities that the recipient does not meet level of care criteria; and

21 (ii) The recipient has either appealed that level of care determination and been  
22 unsuccessful, or any appeal period available to the recipient regarding that level of care  
23 determination has expired.

24 (d) The executive office is further authorized to consolidate all home- and community-  
25 based services currently provided pursuant to 42 U.S.C. § 1396n into a single system of home-  
26 and community-based services that include options for consumer direction and shared living. The  
27 resulting single home- and community-based services system shall replace and supersede all 42  
28 U.S.C. § 1396n programs when fully implemented. Notwithstanding the foregoing, the resulting  
29 single program home- and community-based services system shall include the continued funding  
30 of assisted-living services at any assisted-living facility financed by the Rhode Island housing and  
31 mortgage finance corporation prior to January 1, 2006, and shall be in accordance with chapter  
32 66.8 of title 42 as long as assisted-living services are a covered Medicaid benefit.

33 (e) The executive office is authorized to promulgate rules that permit certain optional  
34 services including, but not limited to, homemaker services, home modifications, respite, and

1 physical therapy evaluations to be offered to persons at risk for Medicaid-funded, long-term care  
2 subject to availability of state-appropriated funding for these purposes.

3 (f) To promote the expansion of home- and community-based service capacity, the  
4 executive office is authorized to pursue payment methodology reforms that increase access to  
5 homemaker, personal care (home health aide), assisted living, adult supportive-care homes, and  
6 adult day services, as follows:

7 (1) Development of revised or new Medicaid certification standards that increase access  
8 to service specialization and scheduling accommodations by using payment strategies designed to  
9 achieve specific quality and health outcomes.

10 (2) Development of Medicaid certification standards for state-authorized providers of  
11 adult-day services, excluding such providers of services authorized under § 40.1-24-1(3), assisted  
12 living, and adult supportive care (as defined under chapter 17.24 of title 23) that establish for  
13 each, an acuity-based, tiered service and payment methodology tied to: licensure authority; level  
14 of beneficiary needs; the scope of services and supports provided; and specific quality and  
15 outcome measures.

16 The standards for adult-day services for persons eligible for Medicaid-funded, long-term  
17 services may differ from those who do not meet the clinical/functional criteria set forth in § 40-  
18 8.10-3.

19 (3) As the state's Medicaid program seeks to assist more beneficiaries requiring long-term  
20 services and supports in home- and community-based settings, the demand for home care workers  
21 has increased, and wages for these workers has not kept pace with neighboring states, leading to  
22 high turnover and vacancy rates in the state's home-care industry, the executive office shall  
23 institute a one-time increase in the base-payment rates for home-care service providers to  
24 promote increased access to and an adequate supply of highly trained home health care  
25 professionals, in amount to be determined by the appropriations process, for the purpose of  
26 raising wages for personal care attendants and home health aides to be implemented by such  
27 providers.

28 (4) A prospective base adjustment, effective not later than July 1, 2018, of ten percent  
29 (10%) of the current base rate for home care providers, home nursing care providers, and hospice  
30 providers contracted with the executive office of health and human services and its subordinate  
31 agencies to deliver Medicaid fee-for-service personal care attendant services.

32 (5) A prospective base adjustment, effective not later than July 1, 2018, of twenty percent  
33 (20%) of the current base rate for home care providers, home nursing care providers, and hospice  
34 providers contracted with the executive office of health and human services and its subordinate

1 agencies to deliver Medicaid fee-for-service skilled nursing and therapeutic services and hospice  
2 care.

3 (6) The rate for hospice providers delivering hospice care in a skilled nursing facility  
4 shall not exceed ninety-five percent (95%) of the rate paid for non-hospice care in a skilled  
5 nursing facility.

6 ~~(6)~~(7) On the first of July in each year, beginning on July 1, 2019, the executive office of  
7 health and human services will initiate an annual inflation increase to the base rate by a  
8 percentage amount equal to the New England Consumer Price Index card as determined by the  
9 United States Department of Labor for medical care and for compliance with all federal and state  
10 laws, regulations, and rules, and all national accreditation program requirements.

11 (g) The executive office shall implement a long-term-care options counseling program to  
12 provide individuals, or their representatives, or both, with long-term-care consultations that shall  
13 include, at a minimum, information about: long-term-care options, sources, and methods of both  
14 public and private payment for long-term-care services and an assessment of an individual's  
15 functional capabilities and opportunities for maximizing independence. Each individual admitted  
16 to, or seeking admission to, a long-term-care facility, regardless of the payment source, shall be  
17 informed by the facility of the availability of the long-term-care options counseling program and  
18 shall be provided with long-term-care options consultation if they so request. Each individual  
19 who applies for Medicaid long-term-care services shall be provided with a long-term-care  
20 consultation.

21 (h) The executive office is also authorized, subject to availability of appropriation of  
22 funding, and federal, Medicaid-matching funds, to pay for certain services and supports necessary  
23 to transition or divert beneficiaries from institutional or restrictive settings and optimize their  
24 health and safety when receiving care in a home or the community. The secretary is authorized to  
25 obtain any state plan or waiver authorities required to maximize the federal funds available to  
26 support expanded access to such home- and community-transition and stabilization services;  
27 provided, however, payments shall not exceed an annual or per-person amount.

28 (i) To ensure persons with long-term-care needs who remain living at home have  
29 adequate resources to deal with housing maintenance and unanticipated housing-related costs, the  
30 secretary is authorized to develop higher resource eligibility limits for persons or obtain any state  
31 plan or waiver authorities necessary to change the financial eligibility criteria for long-term  
32 services and supports to enable beneficiaries receiving home and community waiver services to  
33 have the resources to continue living in their own homes or rental units or other home-based  
34 settings.

1 (j) The executive office shall implement, no later than January 1, 2016, the following  
2 home- and community-based service and payment reforms:

3 (1) Community-based, supportive-living program established in § 40-8.13-12;

4 (2) Adult day services level of need criteria and acuity-based, tiered-payment  
5 methodology; and

6 (3) Payment reforms that encourage home- and community-based providers to provide  
7 the specialized services and accommodations beneficiaries need to avoid or delay institutional  
8 care.

9 (k) The secretary is authorized to seek any Medicaid section 1115 waiver or state-plan  
10 amendments and take any administrative actions necessary to ensure timely adoption of any new  
11 or amended rules, regulations, policies, or procedures and any system enhancements or changes,  
12 for which appropriations have been authorized, that are necessary to facilitate implementation of  
13 the requirements of this section by the dates established. The secretary shall reserve the discretion  
14 to exercise the authority established under §§ 42-7.2-5(6)(v) and 42-7.2-6.1, in consultation with  
15 the governor, to meet the legislative directives established herein.

16 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 - LONG-TERM CARE  
SERVICES AND FINANCE REFORMS

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1           This act would require that the rate for hospice providers, delivering hospice care in a  
2 skilled nursing facility, not exceed ninety-five percent (95%) of the rate paid for non-hospice care  
3 in a skilled nursing facility.

4           This act would take effect upon passage.

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