

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: Senators DiPalma, Miller, Sosnowski, and Felag

Date Introduced: March 10, 2022

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 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~~ 2022 utilizing data from the most recent
4 finalized year of facility cost reports. The per diem rate components described in subsections (a)
5 (2)(i) and (a)(2)(ii) of this section shall be adjusted accordingly to reflect changes in direct and
6 indirect care costs since the previous rearray;

7 (iv) Application of a fair-rental value system;

8 (v) Application of a pass-through system; and

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

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

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

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

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

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

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

32 (ii) Any facility that does not comply with the terms of certification shall be subjected to a
33 clawback and twenty-five percent (25%) penalty of the unspent or impermissibly spent funds, paid
34 by the nursing facility to the state, in the amount of increased reimbursement subject to this

1 provision that was not expended in compliance with that certification.

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

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

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

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

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

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

28 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

1 This act would for purposes of rates of payment to nursing facilities under the "Medical
2 Assistance" chapter, adjust the elements to be developed by the executive office in determining
3 Medicaid payment methods to nursing facilities.

4 This act would take effect upon passage.

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