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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO HUMAN SERVICES -- MEDICAL ASSISTANCE

Introduced By: Representatives Serpa, and Fellela

Date Introduced: February 26, 2014

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 40 of the General Laws entitled "HUMAN SERVICES" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 6.1

4 NURSING FACILITY CARE FOR PERSONS APPLYING FOR MEDICAID DURING

5 PENDENCY OF AN APPLICATION OR APPEAL

6 **40-8-6.1. Nursing Facility Care during Pendency of Application or Appeal. --**

7 (a) Definitions. For purposes of this section, the following terms shall have the meanings
8 indicated:

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

11 (2) "Authorized representative" means an individual who signs an application for
12 Medicaid benefits on behalf of a Medicaid applicant.

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

1 application a complete application.

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

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

6 (6) "Release" means a written document which: Indicates consent to the disclosure to a
7 nursing facility by the director or designee of information concerning an application for Medicaid
8 benefits filed on behalf of a resident of that nursing facility for the purpose of assuring the ability
9 to be paid for its services by that nursing facility. Which includes the following elements:

10 (i) A description of the information that may be disclosed under the release;

11 (ii) The name of the nursing facility;

12 (iii) The name of the person or persons acting on behalf of the nursing facility to whom
13 the information may be disclosed;

14 (iv) The period for which the release will be in effect, which may extend from the date of
15 the application for benefits until the expiration of any appeal period following the determination
16 of that application; and

17 (v) The signature of the Medicaid applicant, authorized representative, or other person
18 legally authorized to sign on behalf of the Medicaid applicant, such as a guardian or attorney-in-
19 fact.

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

25 (b) Uncompensated care during pendency of an application for benefits. A nursing
26 facility may not discharge a Medicaid applicant for non-payment of the facility's bill during the
27 pendency of a complete application; nor may a nursing facility charge a Medicaid applicant for
28 care provided during the pendency of a complete application, except for an amount representing
29 the estimated applied income. A nursing facility may discharge a Medicaid applicant for non-
30 payment of the facility's bill during the pendency of an application for Medicaid coverage that is
31 not a complete application, but only if the nursing facility has provided the resident (and his or
32 her authorized representative, if known) with thirty (30) days' written notice of its intention to do
33 so, and the application remains incomplete during that thirty (30) day period.

34 (c) Uncompensated care while determination is overdue. When a complete application

1 has been pending for sixty (60) days or longer, then upon the request of a nursing facility
2 providing uncompensated care, the state shall make payment to the facility for the care provided
3 to the applicant in full as though the application were approved, beginning on the date of such
4 request. Payment under this subsection (c) shall not be made for the period prior to the nursing
5 facility's request, but shall continue thereafter until the application is decided. In the event the
6 application is denied, the department shall not have any right of recovery, offset, or recoupment
7 with respect to payments made hereunder for the period prior to the determination, and shall have
8 no obligation to make further payment to the facility under this subsection, except as provided in
9 subsection (d) below. In the event the application is approved, the state may offset payments
10 made for the period between the date of application and determination by any amounts paid
11 hereunder.

12 (d) Uncompensated care during overdue appeal. If an application for Medicaid coverage
13 for nursing facility care made by or on behalf of a Medicaid applicant is denied; and the denial is
14 appealed; and a period of sixty (60) days or more has elapsed from the date the appeal was filed;
15 then provided the nursing facility has provided uncompensated care to the applicant during that
16 sixty (60) day period, upon request of the nursing facility, the state shall make payment to the
17 facility for the care provided to the Medicaid Applicant in full as though the denial were
18 overturned, beginning on the date of that request. Such payment shall continue until the appeal is
19 decided. In the event the denial is upheld, the department shall not have any right of offset or
20 recoupment with respect to payments made hereunder for the period prior to the decision on
21 appeal, and shall have no obligation to make further payment to the facility under this subsection.
22 In the event the denial is overturned, the state may offset payments made for the period between
23 the date of the appeal and its determination by any amounts paid hereunder.

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

31 (1) Without Release - If the nursing facility has not obtained a release, the director or
32 designee must provide the following information only, in writing: (i) whether or not the
33 application has been approved; and (ii) if the application has not yet been decided, whether or not
34 the application is a complete application.

1 (2) With Release - If the nursing facility has obtained a release, the director or designee
2 must additionally provide any further information requested by the nursing facility, to the extent
3 that the release permits its disclosure.

4 (f) Notice of appeal status. When a nursing facility is providing uncompensated care to a
5 Medicaid applicant during the pendency of an appeal from the denial of the Medicaid applicant's
6 application for Medicaid coverage, then the nursing facility may advise the director or designee
7 of its status, and the director or designee must thereafter provide the nursing facility with written
8 notice upon disposition of the appeal, including whether such disposition upholds or overturns the
9 initial denial, or consists of dismissal or other disposition of the appeal.

10 SECTION 2. Title 40 of the General Laws entitled "HUMAN SERVICES" is hereby
11 amended by adding thereto the following chapter:

12 CHAPTER 6.2

13 SUPPORT FOR RESIDENTS OF NURSING FACILITIES

14 **40-8-6.2. Support for Certain Residents of Nursing Facilities.--** (a) Definitions. For
15 purposes of this section:

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

18 (2) "Authorized individual" means a person who has authority over the income of a
19 resident of a nursing facility such as a person who has been given or has otherwise obtained
20 authority over a resident's bank account, has been named as or has rights as a joint account
21 holder, or is a fiduciary as defined below.

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

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

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

32 (6) "Penalty period" means the period of Medicaid ineligibility imposed pursuant to 42
33 USC 1396p(c), as amended from time to time, on a person whose assets have been transferred for
34 less than fair market value;

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

6 (b) Penalty period resulting from transfer. Any transfer or assignment of assets resulting
7 in the establishment or imposition of a penalty period shall create a debt that shall be due and
8 owing to a nursing facility for the unpaid costs of care provided during the penalty period to a
9 resident of that facility who has been subject to the penalty period. The amount of the debt
10 established shall not exceed the fair market value of the transferred assets at the time of transfer
11 that are the subject of the penalty period. A nursing facility may bring an action to collect a debt
12 for the unpaid costs of care given to a resident who has been subject to a penalty period, against
13 either the transferor or the transferee, or both. The provisions of this section shall not affect other
14 rights or remedies of the parties.

15 (c) Failure to complete medicaid application. A nursing facility may recover unpaid costs
16 of care from any person who is a fiduciary of a resident of that facility, who fails to promptly
17 complete and fully prosecute an application for the resident for coverage under Medicaid or any
18 other support program or insurance policy. No action may be brought under this subsection (b)
19 until the nursing facility has provided the fiduciary with thirty (30) days advance written notice of
20 its intent to do so; and the nursing facility has been providing uncompensated care to the resident
21 for a period of at least thirty (30) days. If a court of competent jurisdiction determines, based
22 upon clear and convincing evidence, that a defendant wilfully failed to promptly complete or
23 fully prosecute such an application, the court may award the amount of the unpaid costs of care,
24 court costs and reasonable attorneys' fees to the nursing facility.

25 (d) Applied income. A nursing facility may provide written notice to a resident who is a
26 Medicaid recipient and any authorized individual of that resident of: (1) The amount of applied
27 income due; (2) The recipient's legal obligation to pay such applied income to the nursing facility;
28 and (3) The recipient's failure to pay applied income due to a nursing facility not later than thirty
29 (30) days after receiving such notice from the nursing facility may result in a court action to
30 recover the amount of applied income due. A nursing facility that is owed applied income may, in
31 addition to any other remedies authorized under law, bring a claim to recover the applied income
32 against a resident and any authorized individual. If a court of competent jurisdiction determines,
33 based upon clear and convincing evidence, that a defendant wilfully failed to pay or withheld
34 applied income due and owing to a nursing facility for more than thirty (30) days after receiving

1 notice pursuant to this subsection (d), the court may award the amount of the debt owed, court
2 costs and reasonable attorneys' fees to the nursing facility.

3 (e) Effects. Nothing contained in this section shall prohibit or otherwise diminish any
4 other causes of action possessed by any such nursing facility. The death of the person receiving
5 nursing facility care shall not nullify or otherwise affect the liability of the person or persons
6 charged with the costs of care rendered or the applied income amount as referenced in this
7 section.

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

10 **15-10-8. Support for certain residents of nursing facilities. -- The uncompensated**
11 costs of care provided by a licensed nursing facility to any person may be recovered by the
12 nursing facility from any child of that person who is above the age of eighteen (18) years, to the
13 extent that:

14 (1) The child previously received a transfer of any interests or assets from the person
15 receiving such care, which transfer resulted in a period of Medicaid ineligibility imposed pursuant
16 to 42 USC 1396p(c), as amended from time to time, on a person whose assets have been
17 transferred for less than fair market value; or

18 (2) The child is a legal guardian of that person, or an agent under a power of attorney
19 over the person and/or the person's estate who fails to promptly complete and fully prosecute an
20 application for the person for coverage under Medicaid or any other available support program or
21 insurance policy.

22 Recourse under subsection (1) of this section shall be limited to the fair market value of
23 the interests or assets transferred at the time of transfer. No action may be brought under
24 subsection (2) until the nursing facility has first provided thirty (30) days advance written notice
25 to the person or persons to be charged thereunder of its intent to do so; and the nursing facility
26 has been providing uncompensated care to the resident for a period of at least thirty (30) days. For
27 the purposes of this section "the costs of care" shall mean the costs of providing care, including
28 nursing care, personal care, meals, transportation and any other costs, charges, and expenses
29 incurred by the facility in providing care to a patient. Costs of care shall not exceed the customary
30 rate the nursing facility charges to a patient who pays for his or her care directly rather than
31 through a governmental or other third-party payor. Nothing contained in this section shall prohibit
32 or otherwise diminish any other causes of action possessed by any such nursing facility. The
33 death of the person receiving nursing facility care shall not nullify or otherwise affect the liability
34 of the person or persons charged with the costs of care hereunder.

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

3 **40-5-13. Obligation of kindred for support.** -- (a) The kindred of any poor person, if
4 any he or she shall have in the line or degree of father or grandfather, mother or grandmother,
5 children or grandchildren, by consanguinity, or children by adoption, living within this state and
6 of sufficient ability, shall be holden to support the pauper in proportion to their ability.

7 (b) The uncompensated costs of care provided by a licensed nursing facility to any patient
8 may be recovered by the nursing facility from any person who is obligated to provide support to
9 that patient under subsection (a) hereof, to the extent that:

10 (1) The individual so obligated received a transfer of any interests or assets from the
11 patient receiving such care, which transfer resulted in a period of Medicaid ineligibility imposed
12 pursuant to 42 USC 1396p(c), as amended from time to time, on a person whose assets have been
13 transferred for less than fair market value; or

14 (2) The individual so obligated is a legal guardian of that patient, or an agent under a
15 power of attorney over the patient and/or the patient's estate who fails to promptly complete and
16 fully prosecute an application for the patient for coverage under Medicaid or any other available
17 support program or insurance policy.

18 (c) Recourse under subsection (b)(1) of this section shall be limited to the fair market
19 value of the interests or assets transferred at the time of transfer. No action may be brought under
20 subsection (b)(2) until the nursing facility has first provided thirty (30) days advance written
21 notice to the person or persons to be charged thereunder of its intent to do so; and the nursing
22 facility has been providing uncompensated care to the resident for a period of at least thirty (30)
23 days. For the purposes of this section the costs of care" shall mean the costs of providing care,
24 including nursing care, personal care, meals, transportation and any other costs, charges, and
25 expenses incurred by the facility in providing care to a patient. Costs of care shall not exceed the
26 customary rate the nursing facility charges to a patient who pays for his or her care directly rather
27 than through a governmental or other third-party payor. Nothing contained in this section shall
28 prohibit or otherwise diminish any other causes of action possessed by any such nursing facility.
29 The death of the patient receiving nursing facility care shall not nullify or otherwise affect the
30 liability of the person or persons charged with the costs of care hereunder.

31 SECTION 5. 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 provide standards for state compensation of nursing facilities for patients
2 who have either applied for Medicaid benefits or have appealed an adverse Medicaid benefits
3 determination. Further, this act would provide standards for the treatment of uncompensated care
4 by nursing facilities to Medicaid applicants.

5 This act would also provide rules regarding how much of his or her income a Medicaid
6 recipient must pay for nursing facility care.

7 This act would also allow for proceedings against children of parents who are in nursing
8 facilities and for support by children of parents who are in nursing facilities.

9 This act would take effect upon passage.

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