

2014 -- H 7732

LC004395

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO HUMAN SERVICES - MEDICAL ASSISTANCE - LONG-TERM CARE
SERVICE AND FINANCE REFORM

Introduced By: Representatives Ferri, McNamara, Cimini, Gallison, and Slater

Date Introduced: February 27, 2014

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 WHEREAS, Medicaid home nursing care providers have not received a reimbursement
2 rate increase in the past six (6) consecutive years; and

3 WHEREAS, Medicaid adult day health centers have not received a reimbursement rate
4 increase in the past six (6) consecutive years; and

5 WHEREAS, Medicaid home behavioral healthcare service providers have not received a
6 reimbursement rate increase in the past twelve (12) years; and

7 WHEREAS, Adult day health centers provide care and services to increasingly acute and
8 frail individuals; and

9 WHEREAS, Home health and adult day service providers have faced increasing
10 operational costs, such as insurance, utilities, and compliance with the Affordable Care Act; and

11 WHEREAS, Adequate financial support of home healthcare services and adult day health
12 services through the state's Integrated Care Initiative will potentially save the state significant
13 dollars by allowing more of its elderly and disabled citizens to live at home and in the community
14 instead of facility-based care and frequent hospitalization.

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

18 **40-8.9-9. Long-term care re-balancing system reform goal.** -- (a) Notwithstanding any

1 other provision of state law, the department of human services is authorized and directed to apply
2 for and obtain any necessary waiver(s), waiver amendment(s) and/or state plan amendments from
3 the secretary of the United States department of health and human services, and to promulgate
4 rules necessary to adopt an affirmative plan of program design and implementation that addresses
5 the goal of allocating a minimum of fifty percent (50%) of Medicaid long-term care funding for
6 persons aged sixty-five (65) and over and adults with disabilities, in addition to services for
7 persons with developmental disabilities and mental disabilities, to home and community-based
8 care on or before December 31, 2013; provided, further, the executive office of health and human
9 services shall report annually as part of its budget submission, the percentage distribution
10 between institutional care and home and community-based care by population and shall report
11 current and projected waiting lists for long-term care and home and community-based care
12 services. The department is further authorized and directed to prioritize investments in home and
13 community-based care and to maintain the integrity and financial viability of all current long-
14 term care services while pursuing this goal.

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

26 (c) Pursuant to federal authority procured under section 42-7.2-16 of the general laws,
27 the department of human services is directed and authorized to adopt a tiered set of criteria to be
28 used to determine eligibility for services. Such criteria shall be developed in collaboration with
29 the state's health and human services departments and, to the extent feasible, any consumer group,
30 advisory board, or other entity designated for such purposes, and shall encompass eligibility
31 determinations for long-term care services in nursing facilities, hospitals, and intermediate care
32 facilities for the mentally retarded as well as home and community-based alternatives, and shall
33 provide a common standard of income eligibility for both institutional and home and community-
34 based care. The department is, subject to prior approval of the general assembly, authorized to

1 adopt criteria for admission to a nursing facility, hospital, or intermediate care facility for the
2 mentally retarded that are more stringent than those employed for access to home and
3 community-based services. The department is also authorized to promulgate rules that define the
4 frequency of re-assessments for services provided for under this section. Legislatively approved
5 levels of care may be applied in accordance with the following:

6 (1) The department shall apply pre-waiver level of care criteria for any Medicaid
7 recipient eligible for a nursing facility, hospital, or intermediate care facility for the mentally
8 retarded as of June 30, 2009, unless the recipient transitions to home and community based
9 services because he or she: (a) Improves to a level where he/she would no longer meet the pre-
10 waiver level of care criteria; or (b) The individual chooses home and community based services
11 over the nursing facility, hospital, or intermediate care facility for the mentally retarded. For the
12 purposes of this section, a failed community placement, as defined in regulations promulgated by
13 the department, shall be considered a condition of clinical eligibility for the highest level of care.
14 The department shall confer with the long-term care ombudsperson with respect to the
15 determination of a failed placement under the ombudsperson's jurisdiction. Should any Medicaid
16 recipient eligible for a nursing facility, hospital, or intermediate care facility for the mentally
17 retarded as of June 30, 2009 receive a determination of a failed community placement, the
18 recipient shall have access to the highest level of care; furthermore, a recipient who has
19 experienced a failed community placement shall be transitioned back into his or her former
20 nursing home, hospital, or intermediate care facility for the mentally retarded whenever possible.
21 Additionally, residents shall only be moved from a nursing home, hospital, or intermediate care
22 facility for the mentally retarded in a manner consistent with applicable state and federal laws.

23 (2) Any Medicaid recipient eligible for the highest level of care who voluntarily leaves a
24 nursing home, hospital, or intermediate care facility for the mentally retarded shall not be subject
25 to any wait list for home and community based services.

26 (3) No nursing home, hospital, or intermediate care facility for the mentally retarded
27 shall be denied payment for services rendered to a Medicaid recipient on the grounds that the
28 recipient does not meet level of care criteria unless and until the department of human services
29 has: (i) performed an individual assessment of the recipient at issue and provided written notice to
30 the nursing home, hospital, or intermediate care facility for the mentally retarded that the
31 recipient does not meet level of care criteria; and (ii) the recipient has either appealed that level of
32 care determination and been unsuccessful, or any appeal period available to the recipient
33 regarding that level of care determination has expired.

34 (d) The department of human services is further authorized and directed to consolidate

1 all home and community-based services currently provided pursuant to section 1915(c) of title
2 XIX of the United States Code into a single system of home and community-based services that
3 include options for consumer direction and shared living. The resulting single home and
4 community-based services system shall replace and supersede all section 1915(c) programs when
5 fully implemented. Notwithstanding the foregoing, the resulting single program home and
6 community-based services system shall include the continued funding of assisted living services
7 at any assisted living facility financed by the Rhode Island housing and mortgage finance
8 corporation prior to January 1, 2006, and shall be in accordance with chapter 66.8 of title 42 of
9 the general laws as long as assisted living services are a covered Medicaid benefit.

10 (e) The department of human services is authorized to promulgate rules that permit
11 certain optional services including, but not limited to, homemaker services, home modifications,
12 respite, and physical therapy evaluations to be offered subject to availability of state-appropriated
13 funding for these purposes.

14 (f) To promote the expansion of home and community-based service capacity, the
15 department of human services [and executive office of health and human services](#) is authorized
16 and directed to pursue rate reform for homemaker, personal care (home health aide) and adult day
17 care services, as follows:

18 (1) A prospective base adjustment effective, not later than July 1, 2008, across all
19 departments and programs, of ten percent (10%) of the existing standard or average rate,
20 contingent upon a demonstrated increase in the state-funded or Medicaid caseload by June 30,
21 2009;

22 ~~(2) Development, not later than September 30, 2008, of certification standards~~
23 ~~supporting and defining targeted rate increments to encourage service specialization and~~
24 ~~scheduling accommodations including, but not limited to, medication and pain management,~~
25 ~~wound management, certified Alzheimer's Syndrome treatment and support programs, and shift~~
26 ~~differentials for night and week-end services; and~~

27 ~~(3) Development and submission to the governor and the general assembly, not later than~~
28 ~~December 31, 2008, of a proposed rate setting methodology for home and community based~~
29 ~~services to assure coverage of the base cost of service delivery as well as reasonable coverage of~~
30 ~~changes in cost caused by wage inflation.~~

31 [\(2\) A prospective base adjustment effective not later than October 1, 2014 across all](#)
32 [departments and programs of ten \(10%\) percent of the existing base rate.](#)

33 [\(3\) Development of rate enhancements for complex adult day participants to reflect](#)
34 [participant acuity, dementia care, and other criteria as determined by the department of human](#)

1 [services and executive office of health and human services, to be implemented on January 1,](#)
2 [2015.](#)

3 [\(4\) Annual adjustments to the provider reimbursement rates by a percentage amount](#)
4 [equal to the change in a recognized national long-term care inflation index to begin on October 1,](#)
5 [of 2015.](#)

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

16 (h) The department of human services is also authorized, subject to availability of
17 appropriation of funding, to pay for certain expenses necessary to transition residents back to the
18 community; provided, however, payments shall not exceed an annual or per person amount.

19 (i) To assure the continued financial viability of nursing facilities, the department of
20 human services is authorized and directed to develop a proposal for revisions to section 40-8-19
21 that reflect the changes in cost and resident acuity that result from implementation of this re-
22 balancing goal. Said proposal shall be submitted to the governor and the general assembly on or
23 before January 1, 2010.

24 (j) To ensure persons with long-term care needs who remain living at home have
25 adequate resources to deal with housing maintenance and unanticipated housing related costs, the
26 department of human services is authorized to develop higher resource eligibility limits for
27 persons on home and community waiver services who are living in their own homes or rental
28 units.

29 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
SERVICE AND FINANCE REFORM

1 This act would provide for an increase in the reimbursement rate for Medicaid home
2 nursing care providers, Medicaid adult day health centers and Medicaid home behavioral
3 healthcare service providers, by requiring a prospective base adjustment across all departments
4 and programs of ten (10%) percent of the existing base rate, developing rate enhancements for
5 complex adult day participants and providing for annual adjustments to the reimbursement rates
6 by a percentage amount equal to the change in a national long-term care inflation index beginning
7 on October 1, 2015.

8 This act would take effect upon passage.

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