

2018 -- H 7664

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO HUMAN SERVICES -- MEDICAL ASSISTANCE

Introduced By: Representatives Slater, Regunberg, Blazejewski, and Maldonado

Date Introduced: February 15, 2018

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
15 authorized to modify the principles of reimbursement to replace the current cost-based
16 methodology rates with rates based on a price-based methodology to be paid to all facilities with
17 recognition of the acuity of patients and the relative Medicaid occupancy, and to include the
18 following elements to be 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 rerearray of costs for all facilities every three (3) years beginning October, 2015, that
3 may or may not result in automatic per diem revisions;
4 (iv) Application of a fair-rental-value system;
5 (v) Application of a pass-through system; and
6 (vi) Adjustment of rates by the change in a recognized national nursing home inflation
7 index to be applied on October 1st of each year, beginning October 1, 2012. This adjustment will
8 not occur on October 1, 2013, or October 1, 2015, but will occur on April 1, 2015. The
9 adjustment of rates will also not occur on October 1, 2017. Said inflation index shall be applied
10 without regard for the transition factor in subsection (b)(2). For purposes of October 1, 2016,
11 adjustment only, any rate increase that results from application of the inflation index to
12 subparagraphs (a)(2)(i) and (a)(2)(ii) shall be dedicated to increase compensation for direct-care
13 workers in the following manner: Not less than 85% of this aggregate amount shall be expended
14 to fund an increase in wages, benefits, or related employer costs of direct-care staff of nursing
15 homes. For purposes of this section, direct-care staff shall include registered nurses (RNs),
16 licensed practical nurses (LPNs), certified nursing assistants (CNAs), certified medical
17 technicians, housekeeping staff, laundry staff, dietary staff, or other similar employees providing
18 direct-care services; provided, however, that this definition of direct-care staff shall not include:
19 (i) RNs and LPNs who are classified as "exempt employees" under the Federal Fair Labor
20 Standards Act (29 U.S.C. § 201 et seq.); or (ii) CNAs, certified medical technicians, RNs, or
21 LPNs who are contracted, or subcontracted, through a third-party vendor or staffing agency. By
22 July 31, 2017, nursing facilities shall submit to the secretary, or designee, a certification that they
23 have complied with the provisions of this subparagraph (a)(2)(vi) with respect to the inflation
24 index applied on October 1, 2016. Any facility that does not comply with terms of such
25 certification shall be subjected to a clawback, paid by the nursing facility to the state, in the
26 amount of increased reimbursement subject to this provision that was not expended in compliance
27 with that certification.

28 (vii) Beginning on October 1, 2018, any rate increase that results from application of the
29 inflation index to subsections (a)(2)(i) and (a)(2)(ii) of this section shall be dedicated to increase
30 compensation for direct-care workers in the following manner on October 1 of each year: Not less
31 than ninety-five percent (95%) of this aggregate amount shall be expended. This application of
32 the inflation index shall apply for Medicaid reimbursement in nursing homes for both managed
33 care and fee-for-service. For purposes of this subsection, direct care staff shall include registered
34 nurses (RNs), licensed practical nurses (LPNs), certified nursing assistants (CNAs), certified

1 medical technicians, housekeeping staff, laundry staff, dietary staff or other similar employees
2 providing direct care services; provided, however that this definition of direct care staff shall not
3 include:

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

6 (B) CNAs, certified medical technicians, RNs or LPNs who are contracted or
7 subcontracted through a third-party vendor or staffing agency. By July 31, 2019, and July 31 of
8 each year thereafter, nursing facilities shall submit to the secretary or designee a certification that
9 they have complied with the provisions of subsection (a)(2)(vii) of this section with respect to the
10 inflation index applied on October 1. Any facility that does not comply with terms of such
11 certification shall be subjected to a clawback, paid by the nursing facility to the state, in the
12 amount of increased reimbursement subject to this provision that was not expended in compliance
13 with that certification.

14 (b) Transition to full implementation of rate reform. For no less than four (4) years after
15 the initial application of the price-based methodology described in subdivision (a)(2) to payment
16 rates, the executive office of health and human services shall implement a transition plan to
17 moderate the impact of the rate reform on individual nursing facilities. Said transition shall
18 include the following components:

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

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

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

1 (4) Notwithstanding any law to the contrary, for the twelve-month (12) period beginning
2 July 1, 2015, Medicaid payment rates for nursing facilities established pursuant to this section
3 shall not exceed ninety-eight percent (98%) of the rates in effect on April 1, 2015.

4 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 increase the compensation of direct-care staff of nursing facilities as a
2 result of the application of the inflation index as of October 1, 2018, and on October 1 of each
3 year, with a certification of compliance, with respect to the inflation index, on each July 31
4 thereafter, subject to clawback provisions for noncompliance.

5 This act would take effect upon passage.

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