

2019 -- H 5579

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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

Introduced By: Representatives Lima, Serpa, Shekarchi, Williams, and Vella-Wilkinson

Date Introduced: February 27, 2019

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 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~~ October, 2016, with the per diem rate
4 components described in subsections (a)(2)(i) and (ii) of this section adjusted accordingly to
5 reflect increases in direct and indirect care costs since the previous rearray;
- 6 (iv) Application of a fair-rental value system;
- 7 (v) Application of a pass-through system; and
- 8 (vi) Adjustment of rates by the change in a recognized national nursing home inflation
9 index to be applied on October 1 of each year, beginning October 1, 2012. This adjustment will
10 not occur on October 1, 2013, October 1, 2014, or October 1, 2015, but will occur on April 1,
11 2015. The adjustment of rates will also not occur on October 1, 2017, or October 1, 2018.
12 Effective July 1, 2018, rates paid to nursing facilities from the rates approved by the Centers for
13 Medicare and Medicaid Services and in effect on October 1, 2017, both fee-for-service and
14 managed care, will be increased by one and one-half percent (1.5%) and further increased by one
15 percent (1%) on October 1, 2018. Said inflation index shall be applied without regard for the
16 transition factors in subsections (b)(1) and (b)(2). For purposes of October 1, 2016, adjustment
17 only, any rate increase that results from application of the inflation index to subsections (a)(2)(i)
18 and (a)(2)(ii) shall be dedicated to increase compensation for direct-care workers in the following
19 manner: Not less than 85% of this aggregate amount shall be expended to fund an increase in
20 wages, benefits, or related employer costs of direct-care staff of nursing homes. For purposes of
21 this section, direct-care staff shall include registered nurses (RNs), licensed practical nurses
22 (LPNs), certified nursing assistants (CNAs), certified medical technicians, housekeeping staff,
23 laundry staff, dietary staff, or other similar employees providing direct-care services; provided,
24 however, that this definition of direct-care staff shall not include: (i) RNs and LPNs who are
25 classified as "exempt employees" under the Federal Fair Labor Standards Act (29 U.S.C. § 201 et
26 seq.); or (ii) CNAs, certified medical technicians, RNs, or LPNs who are contracted, or
27 subcontracted, through a third-party vendor or staffing agency. By July 31, 2017, nursing
28 facilities shall submit to the secretary, or designee, a certification that they have complied with
29 the provisions of this subsection (a)(2)(vi) with respect to the inflation index applied on October
30 1, 2016. Any facility that does not comply with terms of such certification shall be subjected to a
31 clawback, paid by the nursing facility to the state, in the amount of increased reimbursement
32 subject to this provision that was not expended in compliance with that certification.
- 33 (b) Transition to full implementation of rate reform. For no less than four (4) years after
34 the initial application of the price-based methodology described in subsection (a)(2) to payment

1 rates, the executive office of health and human services shall implement a transition plan to
2 moderate the impact of the rate reform on individual nursing facilities. Said transition shall
3 include the following components:

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

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

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

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

23 (c) Rearray, adjustments. In the event the rearray described in subsection (a)(2)(iii) of this
24 section is not performed as scheduled, nursing facility per diem rates shall be increased by three
25 percent (3%) effective on the date that the rearray was scheduled to take place, which three
26 percent (3%) increase shall be irrespective of and in addition to any inflation index applied
27 pursuant to subsection (a)(2)(vi) of this section.

28 (d) Changes to state minimum wage. Notwithstanding anything else in this section to the
29 contrary, at any time when the state increases the required minimum wage pursuant to § 28-12-3
30 or successor statute, the direct care and indirect care components of the Medicaid rates to be paid
31 by the state to nursing facilities under subsections (a)(2)(i) and (ii) of this section shall be
32 increased by the same percentage by which the minimum wage is increased. Such adjustment
33 shall become effective on the date that the minimum wage increase becomes effective, and shall
34 take place irrespective of and in addition to any inflation index applied pursuant to subsections

1 [\(a\)\(2\)\(vi\) of this section.](#)

2 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO HUMAN SERVICES - MEDICAL ASSISTANCE

1 This act would require the executive office of health and human services to adjust, once
2 every three (3) years beginning October 2016, the per diem reimbursement to nursing facilities,
3 by taking into consideration increases in direct and indirect care cases. If the scheduled
4 adjustment does not occur, the per diem reimbursement rate shall increase by three percent (3%)
5 as of the date of the scheduled adjustment.

6 This act would also provide that any time the state increases the minimum wage the
7 direct and indirect care components of the Medicaid rates paid to nursing facilities shall be
8 increased by the same percentage by which the minimum wage is increased.

9 This act would take effect upon passage.

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