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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

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

Introduced By: Representatives Serpa, Lima, and Bennett

Date Introduced: February 26, 2020

Referred To: House Finance

It is enacted by the General Assembly as follows:

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

3 **40-8.9-9. Long-term-care rebalancing system reform goal.**

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

18 (b) The reformed long-term-care system rebalancing goal is person centered and

1 encourages individual self-determination, family involvement, interagency collaboration, and
2 individual choice through the provision of highly specialized and individually tailored home-based
3 services. Additionally, individuals with severe behavioral, physical, or developmental disabilities
4 must have the opportunity to live safe and healthful lives through access to a wide range of
5 supportive services in an array of community-based settings, regardless of the complexity of their
6 medical condition, the severity of their disability, or the challenges of their behavior. Delivery of
7 services and supports in less costly and less restrictive community settings, will enable children,
8 adolescents, and adults to be able to curtail, delay, or avoid lengthy stays in long-term care
9 institutions, such as behavioral health residential-treatment facilities, long-term-care hospitals,
10 intermediate-care facilities, and/or skilled nursing facilities.

11 (c) Pursuant to federal authority procured under § 42-7.2-16, the executive office of health
12 and human services is directed and authorized to adopt a tiered set of criteria to be used to determine
13 eligibility for services. Such criteria shall be developed in collaboration with the state's health and
14 human services departments and, to the extent feasible, any consumer group, advisory board, or
15 other entity designated for such purposes, and shall encompass eligibility determinations for long-
16 term-care services in nursing facilities, hospitals, and intermediate-care facilities for persons with
17 intellectual disabilities, as well as home- and community-based alternatives, and shall provide a
18 common standard of income eligibility for both institutional and home- and community-based care.
19 The executive office is authorized to adopt clinical and/or functional criteria for admission to a
20 nursing facility, hospital, or intermediate-care facility for persons with intellectual disabilities that
21 are more stringent than those employed for access to home- and community-based services. The
22 executive office is also authorized to promulgate rules that define the frequency of re-assessments
23 for services provided for under this section. Levels of care may be applied in accordance with the
24 following:

25 (1) The executive office shall continue to apply the level of care criteria in effect on June
26 30, 2015, for any recipient determined eligible for and receiving Medicaid-funded, long-term
27 services in supports in a nursing facility, hospital, or intermediate-care facility for persons with
28 intellectual disabilities on or before that date, unless:

29 (i) The recipient transitions to home- and community-based services because he or she
30 would no longer meet the level of care criteria in effect on June 30, 2015; or

31 (ii) The recipient chooses home- and community-based services over the nursing facility,
32 hospital, or intermediate-care facility for persons with intellectual disabilities. For the purposes of
33 this section, a failed community placement, as defined in regulations promulgated by the executive
34 office, shall be considered a condition of clinical eligibility for the highest level of care. The

1 executive office shall confer with the long-term-care ombudsperson with respect to the
2 determination of a failed placement under the ombudsperson's jurisdiction. Should any Medicaid
3 recipient eligible for a nursing facility, hospital, or intermediate-care facility for persons with
4 intellectual disabilities as of June 30, 2015, receive a determination of a failed community
5 placement, the recipient shall have access to the highest level of care; furthermore, a recipient who
6 has experienced a failed community placement shall be transitioned back into his or her former
7 nursing home, hospital, or intermediate-care facility for persons with intellectual disabilities
8 whenever possible. Additionally, residents shall only be moved from a nursing home, hospital, or
9 intermediate-care facility for persons with intellectual disabilities in a manner consistent with
10 applicable state and federal laws.

11 (2) Any Medicaid recipient eligible for the highest level of care who voluntarily leaves a
12 nursing home, hospital, or intermediate-care facility for persons with intellectual disabilities shall
13 not be subject to any wait list for home- and community-based services.

14 (3) No nursing home, hospital, or intermediate-care facility for persons with intellectual
15 disabilities shall be denied payment for services rendered to a Medicaid recipient on the grounds
16 that the recipient does not meet level of care criteria unless and until the executive office has:

17 (i) Performed an individual assessment of the recipient at issue and provided written notice
18 to the nursing home, hospital, or intermediate-care facility for persons with intellectual disabilities
19 that the recipient does not meet level of care criteria; and

20 (ii) The recipient has either appealed that level of care determination and been
21 unsuccessful, or any appeal period available to the recipient regarding that level of care
22 determination has expired.

23 (d) The executive office is further authorized to consolidate all home- and community-
24 based services currently provided pursuant to 42 U.S.C. § 1396n into a single system of home- and
25 community-based services that include options for consumer direction and shared living. The
26 resulting single home- and community-based services system shall replace and supersede all 42
27 U.S.C. § 1396n programs when fully implemented. Notwithstanding the foregoing, the resulting
28 single program home- and community-based services system shall include the continued funding
29 of assisted-living services at any assisted-living facility financed by the Rhode Island housing and
30 mortgage finance corporation prior to January 1, 2006, and shall be in accordance with chapter 66.8
31 of title 42 as long as assisted-living services are a covered Medicaid benefit.

32 (e) The executive office is authorized to promulgate rules that permit certain optional
33 services including, but not limited to, homemaker services, home modifications, respite, and
34 physical therapy evaluations to be offered to persons at risk for Medicaid-funded, long-term care

1 subject to availability of state-appropriated funding for these purposes.

2 (f) To promote the expansion of home- and community-based service capacity, the
3 executive office is authorized to pursue payment methodology reforms that increase access to
4 homemaker, personal care (home health aide), assisted living, adult supportive-care homes, and
5 adult day services, as follows:

6 (1) Development of revised or new Medicaid certification standards that increase access to
7 service specialization and scheduling accommodations by using payment strategies designed to
8 achieve specific quality and health outcomes.

9 (2) Development of Medicaid certification standards for state-authorized providers of
10 adult-day services, excluding such providers of services authorized under § 40.1-24-1(3), assisted
11 living, and adult supportive care (as defined under chapter 17.24 of title 23) that establish for each,
12 an acuity-based, tiered service and payment methodology tied to: licensure authority; level of
13 beneficiary needs; the scope of services and supports provided; and specific quality and outcome
14 measures.

15 The standards for adult-day services for persons eligible for Medicaid-funded, long-term
16 services may differ from those who do not meet the clinical/functional criteria set forth in § 40-
17 8.10-3.

18 (3) As the state's Medicaid program seeks to assist more beneficiaries requiring long-term
19 services and supports in home- and community-based settings, the demand for home care workers
20 has increased, and wages for these workers has not kept pace with neighboring states, leading to
21 high turnover and vacancy rates in the state's home-care industry, the executive office shall institute
22 a one-time increase in the base-payment rates for home-care service providers to promote increased
23 access to and an adequate supply of highly trained home health care professionals, in amount to be
24 determined by the appropriations process, for the purpose of raising wages for personal care
25 attendants and home health aides to be implemented by such providers.

26 (4) A prospective base adjustment, effective not later than July 1, 2018, of ten percent
27 (10%) of the current base rate for home care providers, home nursing care providers, and hospice
28 providers contracted with the executive office of health and human services and its subordinate
29 agencies to deliver Medicaid fee-for-service personal care attendant services.

30 (5) A prospective base adjustment, effective not later than July 1, 2018, of twenty percent
31 (20%) of the current base rate for home care providers, home nursing care providers, and hospice
32 providers contracted with the executive office of health and human services and its subordinate
33 agencies to deliver Medicaid fee-for-service skilled nursing and therapeutic services and hospice
34 care.

1 (6) A base adjustment, effective not later than July 1, 2020, of sixteen-point-twenty-nine
2 percent (16.29%) of the current base rate for home care providers, home nursing care providers,
3 and hospice providers contracted with the executive office of health and human services, its
4 subordinate agencies and contractors to deliver Medicaid personal care attendant and homemaking
5 services to beneficiaries.

6 (7) A base adjustment, effective on the same date as any wage increases implemented by
7 the executive office of health and human services or within a collective bargaining agreement for
8 any person working for a program under §§ 40-8.14 and 40-8.15 of a multiple of one-point-forty-
9 two percent (1.42%) of the current base rate for home care providers, home nursing care providers
10 and hospice providers contracted with the executive office of health and human services, its
11 subordinate agencies and contractors to deliver Medicaid personal care attendant and homemaking
12 services to beneficiaries.

13 (8) A base adjustment, effective not later than July 1, 2020, of ten percent (10%) of the
14 current base rate for home care providers, home nursing care providers and hospice providers
15 contracted with the executive office of health and human services, its subordinate agencies and
16 contractors to deliver Medicaid personal care attendant services, skilled nursing care and
17 therapeutic services and hospice care to beneficiaries that reside in a municipality as identified by
18 the office of primary care and rural health within the department of health.

19 (9) A base adjustment, effective not later than July 1, 2020, of ten percent (10%) of the
20 current base rate for home nursing care providers and hospice providers contracted with the
21 executive office of health and human services, its subordinate agencies and contractors to deliver
22 Medicaid skilled nursing care to beneficiaries that have tracheotomies or use ventilators.

23 ~~(6)~~(10) Effective upon passage of this section, hospice provider reimbursement,
24 exclusively for room and board expenses for individuals residing in a skilled nursing facility, shall
25 revert to the rate methodology in effect on June 30, 2018, and these room and board expenses shall
26 be exempted from any and all annual rate increases to hospice providers as provided for in this
27 section.

28 ~~(7)~~(11) On the first of July in each year, beginning on July 1, 2019, the executive office of
29 health and human services will initiate an annual inflation increase to the base rate for home care
30 providers, home nursing care providers, and hospice providers contracted with the executive office
31 and its subordinate agencies to deliver Medicaid fee-for-service personal care attendant services,
32 skilled nursing and therapeutic services and hospice care. The base rate increase shall be a
33 percentage amount equal to the New England Consumer Price Index card as determined by the
34 United States Department of Labor for medical care and for compliance with all federal and state

1 laws, regulations, and rules, and all national accreditation program requirements. [All Medicaid](#)
2 [programs operated by the executive office of health and human services, its subordinate agencies](#)
3 [and contractors shall not reimburse home care providers, home nursing care providers and hospice](#)
4 [providers less than fee-for-service rates.](#)

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

14 (h) The executive office is also authorized, subject to availability of appropriation of
15 funding, and federal, Medicaid-matching funds, to pay for certain services and supports necessary
16 to transition or divert beneficiaries from institutional or restrictive settings and optimize their health
17 and safety when receiving care in a home or the community. The secretary is authorized to obtain
18 any state plan or waiver authorities required to maximize the federal funds available to support
19 expanded access to such home- and community-transition and stabilization services; provided,
20 however, payments shall not exceed an annual or per-person amount.

21 (i) To ensure persons with long-term-care needs who remain living at home have adequate
22 resources to deal with housing maintenance and unanticipated housing-related costs, the secretary
23 is authorized to develop higher resource eligibility limits for persons or obtain any state plan or
24 waiver authorities necessary to change the financial eligibility criteria for long-term services and
25 supports to enable beneficiaries receiving home and community waiver services to have the
26 resources to continue living in their own homes or rental units or other home-based settings.

27 (j) The executive office shall implement, no later than January 1, 2016, the following home-
28 and community-based service and payment reforms:

29 (1) Community-based, supportive-living program established in § 40-8.13-12 or an
30 alternative, successor, or substitute program, or delivery option designated for these purposes by
31 the secretary of the executive office of health and human services;

32 (2) Adult day services level of need criteria and acuity-based, tiered-payment
33 methodology; and

34 (3) Payment reforms that encourage home- and community-based providers to provide the

1 specialized services and accommodations beneficiaries need to avoid or delay institutional care.

2 (k) The secretary is authorized to seek any Medicaid section 1115 waiver or state-plan
3 amendments and take any administrative actions necessary to ensure timely adoption of any new
4 or amended rules, regulations, policies, or procedures and any system enhancements or changes,
5 for which appropriations have been authorized, that are necessary to facilitate implementation of
6 the requirements of this section by the dates established. The secretary shall reserve the discretion
7 to exercise the authority established under §§ 42-7.2-5(6)(v) and 42-7.2-6.1, in consultation with
8 the governor, to meet the legislative directives established herein.

9 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 Medicaid home care, home nursing care and hospice base rate
2 adjustments for services delivered by professionals and paraprofessionals licensed by the
3 department of health to meet the increasing demand for services for medically-complex and rural
4 patients and to meet the need to grow and sustain the licensed nurse assistant workforce. This act
5 would support the state's long-term care rebalancing goals by keeping high-acuity or high medical
6 necessity patients out of skilled nursing facilities and hospitals and remain safe at home and in the
7 community with highly-trained and stable long-term services and support.

8 This act would take effect upon passage.

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