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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO HUMAN SERVICES -- MEDICAL ASSISTANCE

Introduced By: Senators DiPalma, Miller, Murray, and Seveney

Date Introduced: April 08, 2021

Referred To: Senate Health & Human Services

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 authorized  
15 to modify the principles of reimbursement to replace the current cost-based methodology rates with  
16 rates based on a price-based methodology to be paid to all facilities with recognition of the acuity  
17 of patients and the relative Medicaid occupancy, and to include the following elements to be  
18 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 1 of each year, beginning October 1, 2012. This adjustment will not  
8 occur on October 1, 2013, October 1, 2014, or October 1, 2015, but will occur on April 1, 2015.  
9 The adjustment of rates will also not occur on October 1, 2017, October 1, 2018, and October 1,  
10 2019. Effective July 1, 2018, rates paid to nursing facilities from the rates approved by the Centers  
11 for Medicare and Medicaid Services and in effect on October 1, 2017, both fee-for-service and  
12 managed care, will be increased by one and one-half percent (1.5%) and further increased by one  
13 percent (1%) on October 1, 2018, and further increased by one percent (1%) on October 1, 2019.  
14 The inflation index shall be applied without regard for the transition factors in subsections (b)(1)  
15 and (b)(2). For purposes of October 1, 2016, adjustment only, any rate increase that results from  
16 application of the inflation index to subsections (a)(2)(i) and (a)(2)(ii) shall be dedicated to increase  
17 compensation for direct-care workers in the following manner: Not less than 85% of this aggregate  
18 amount shall be expended to fund an increase in wages, benefits, or related employer costs of direct-  
19 care staff of nursing homes. For purposes of this section, direct-care staff shall include registered  
20 nurses (RNs), licensed practical nurses (LPNs), certified nursing assistants (CNAs), certified  
21 medical technicians, housekeeping staff, laundry staff, dietary staff, or other similar employees  
22 providing direct-care services; provided, however, that this definition of direct-care staff shall not  
23 include: (i) RNs and LPNs who are classified as "exempt employees" under the Federal Fair Labor  
24 Standards Act (29 U.S.C. § 201 et seq.); or (ii) CNAs, certified medical technicians, RNs, or LPNs  
25 who are contracted, or subcontracted, through a third-party vendor or staffing agency. By July 31,  
26 2017, nursing facilities shall submit to the secretary, or designee, a certification that they have  
27 complied with the provisions of this subsection (a)(2)(vi) with respect to the inflation index applied  
28 on October 1, 2016. Any facility that does not comply with terms of such certification shall be  
29 subjected to a clawback, paid by the nursing facility to the state, in the amount of increased  
30 reimbursement subject to this provision that was not expended in compliance with that certification.

31 (b) Transition to full implementation of rate reform. For no less than four (4) years after  
32 the initial application of the price-based methodology described in subsection (a)(2) to payment  
33 rates, the executive office of health and human services shall implement a transition plan to  
34 moderate the impact of the rate reform on individual nursing facilities. Said transition shall include

1 the following components:

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

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

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

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

19 (c) Rearray, adjustments. In the event the rearray described in subsection (a)(2)(iii) of this  
20 section is not performed as scheduled, nursing facility per diem rates shall be increased by three  
21 percent (3%) effective on the date that the rearray was scheduled to take place, which three percent  
22 (3%) increase shall be irrespective of and in addition to any inflation index applied pursuant to  
23 subsection (a)(2)(vi) of this section.

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

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

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

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

8           This act would take effect upon passage.

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