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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO HUMAN SERVICES - MEDICAL ASSISTANCE

Introduced By: Representatives Slater, Serpa, Diaz, Hull, and Bennett

Date Introduced: February 12, 2015

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  
3 follows:

4           **40-8.9-9. Long-term care re-balancing system reform goal.** -- (a) Notwithstanding any  
5 other provision of state law, the department of human services is authorized and directed to apply  
6 for and obtain any necessary waiver(s), waiver amendment(s) and/or state plan amendments from  
7 the secretary of the United States department of health and human services, and to promulgate  
8 rules necessary to adopt an affirmative plan of program design and implementation that addresses  
9 the goal of allocating a minimum of fifty percent (50%) of Medicaid long-term care funding for  
10 persons aged sixty-five (65) and over and adults with disabilities, in addition to services for  
11 persons with developmental disabilities and mental disabilities, to home and community-based  
12 care on or before December 31, 2013; provided, further, the executive office of health and human  
13 services shall report annually as part of its budget submission, the percentage distribution  
14 between institutional care and home and community-based care by population and shall report  
15 current and projected waiting lists for long-term care and home and community-based care  
16 services. The department is further authorized and directed to prioritize investments in home and  
17 community-based care and to maintain the integrity and financial viability of all current long-  
18 term care services while pursuing this goal.

19           (b) The reformed long-term care system re-balancing 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-  
3 based services. Additionally, individuals with severe behavioral, physical, or developmental  
4 disabilities must have the opportunity to live safe and healthful lives through access to a wide  
5 range of supportive services in an array of community-based settings, regardless of the  
6 complexity of their medical condition, the severity of their disability, or the challenges of their  
7 behavior. Delivery of services and supports in less costly and less restrictive community settings,  
8 will enable children, adolescents and adults to be able to curtail, delay or avoid lengthy stays in  
9 long-term care institutions, such as behavioral health residential treatment facilities, long-term  
10 care hospitals, intermediate care facilities and/or skilled nursing facilities.

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

25 (1) The department shall apply pre-waiver level of care criteria for any Medicaid  
26 recipient eligible for a nursing facility, hospital, or intermediate care facility for the mentally  
27 retarded as of June 30, 2009, unless the recipient transitions to home and community based  
28 services because he or she: (a) Improves to a level where he/she would no longer meet the pre-  
29 waiver level of care criteria; or (b) The individual chooses home and community based services  
30 over the nursing facility, hospital, or intermediate care facility for the mentally retarded. For the  
31 purposes of this section, a failed community placement, as defined in regulations promulgated by  
32 the department, shall be considered a condition of clinical eligibility for the highest level of care.  
33 The department shall confer with the long-term care ombudsperson with respect to the  
34 determination of a failed placement under the ombudsperson's jurisdiction. Should any Medicaid

1 recipient eligible for a nursing facility, hospital, or intermediate care facility for the mentally  
2 retarded as of June 30, 2009 receive a determination of a failed community placement, the  
3 recipient shall have access to the highest level of care; furthermore, a recipient who has  
4 experienced a failed community placement shall be transitioned back into his or her former  
5 nursing home, hospital, or intermediate care facility for the mentally retarded whenever possible.  
6 Additionally, residents shall only be moved from a nursing home, hospital, or intermediate care  
7 facility for the mentally retarded in a manner consistent with applicable state and federal laws.

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

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

19 (d) The department of human services is further authorized and directed to consolidate  
20 all home and community-based services currently provided pursuant to § 1915(c) of title XIX of  
21 the United States Code into a single system of home and community-based services that include  
22 options for consumer direction and shared living. The resulting single home and community-  
23 based services system shall replace and supersede all § 1915(c) programs when fully  
24 implemented. Notwithstanding the foregoing, the resulting single program home and community-  
25 based services system shall include the continued funding of assisted living services at any  
26 assisted living facility financed by the Rhode Island housing and mortgage finance corporation  
27 prior to January 1, 2006, and shall be in accordance with chapter 66.8 of title 42 of the general  
28 laws as long as assisted living services are a covered Medicaid benefit.

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

33 (f) To promote the expansion of home and community-based service capacity, the  
34 department of human services ~~is~~ [and executive office of health and human services is](#) authorized

1 and directed to pursue rate reform for homemaker, personal care (home health aide) and adult day  
2 care services, as follows:

3 (1) A prospective base adjustment effective, not later than July 1, 2008, across all  
4 departments and programs, of ten percent (10%) of the existing standard or average rate,  
5 contingent upon a demonstrated increase in the state-funded or Medicaid caseload by June 30,  
6 2009;

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

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

16 (2) A prospective base adjustment effective not later than October 1, 2015 across all  
17 departments and programs of ten percent (10%) of the existing base rate.

18 (3) Development of rate enhancements for complex adult day participants to reflect  
19 participant acuity, dementia care, and other criteria as determined by the department of human  
20 services and executive office of health and human services, to be implemented on January 1,  
21 2016.

22 (4) Annual adjustments to the provider reimbursement rates by a percentage amount  
23 equal to the change in a recognized national long-term care inflation index to begin on October 1,  
24 2016.

25 (g) The department, in collaboration with the executive office of human services, shall  
26 implement a long-term care options counseling program to provide individuals or their  
27 representatives, or both, with long-term care consultations that shall include, at a minimum,  
28 information about: long-term care options, sources and methods of both public and private  
29 payment for long-term care services and an assessment of an individual's functional capabilities  
30 and opportunities for maximizing independence. Each individual admitted to or seeking  
31 admission to a long-term care facility regardless of the payment source shall be informed by the  
32 facility of the availability of the long-term care options counseling program and shall be provided  
33 with long-term care options consultation if they so request. Each individual who applies for  
34 Medicaid long-term care services shall be provided with a long-term care consultation.

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

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

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

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
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- 1           This act would provide for annual adjustments to the provider reimbursement rates and
- 2   development of rate enhancements for complex adult day participants.
- 3           This act would take effect upon passage.

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