

**STATE OF RHODE ISLAND
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES**

**12/3/2021 PUBLIC NOTICE OF PROPOSED AMENDMENT TO THE RHODE ISLAND MEDICAID
STATE PLAN**

In accordance Rhode Island General Laws 42-35, notice is hereby given that the Executive Office of Health and Human Services (EOHHS) proposes to make the following amendment to the Rhode Island State Plan under Title XIX of the Social Security Act:

Nursing Home Base Rate Staffing Adjustment, Minimum Staffing Compliance, Wage Pass-Through Requirements and Payment Methodology Updates

On September 22, 2021 EOHHS notified the public of its intent to submit to the Centers for Medicare and Medicaid Services (CMS) a State Plan Amendment (SPA) related to nursing home base rate staffing adjustment, minimum staffing compliance, wage pass-through requirements and payment methodology updates. After reviewing public comments, EOHHS has revised the proposed State Plan Amendment in response to public comments and provides a revised public notice below.

In accordance with enactments of legislation from the 2021 session of the Rhode Island General Assembly and to ensure compliance with CMS requirements to update the Rhode Island State Medicaid Plan to reflect current payment methodologies, EOHHS will submit to the federal Centers for Medicare and Medicaid Services (CMS) an amendment to the Rhode Island Medicaid State Plan. This amendment will require that in addition to the annual nursing home inflation index adjustment there will also be a base rate staffing adjustment of one-half percent (0.5%) on October 1, 2021, one percent (1.0%) on October 1, 2022, and one and one-half percent (1.5%) on October 1, 2023. The amendment also establishes new minimum staffing and wage-pass through requirements for nursing homes.

The amendment will also authorize EOHHS to enforce compliance of these new requirements through Medicaid payment clawbacks, withholding of Medicaid payments to nursing homes for individuals admitted on or after January 1, 2022, or freezing of admissions of new residents. The amendment also clarifies the source of the data for the RUG score can be submitted by the provider as part of the MDS Assessment. The amendment further clarifies that EOHHS uses the Center for Medicare and Medicaid Services (CMS) Skilled Nursing Facility Prospective Payment System Market Basket Update without productivity adjustment and the Fair Rental Value calculations for nursing homes.

This change is projected to increase expenditures by \$1,584,628 all funds for FFY 2022 and \$3,064,056 all funds for FFY 2023. The proposed effective date of this change is October 1, 2021.

This proposed amendment is accessible on the EOHHS website (www.eohhs.ri.gov) or available in hard copy upon request (401-462-2598 or RI Relay, dial 711). Interested persons should submit data, views, or written comments by January 3, 2022 to Katy Thomas, Executive Office of Health and Human Services, 3 West Rd, Cranston, RI, 02920, or Kathryn.Thomas@ohhs.ri.gov or via phone at (401) 462-2598.

In accordance with the Rhode Island General Laws 42-35-2.8, an oral hearing will be granted on the proposed State Plan Amendment if requested by twenty-five (25) persons, an agency, or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within ten (10) days of this notice. The Executive Office of Health and Human Services does not discriminate against individuals based on race, color, national origin, sex, gender identity or expression, sexual orientation, religious belief, political belief, or handicap in acceptance for or provision of services or employment in its programs or activities.

**Original Signed by: Womazetta Jones, Secretary,
Signed this 3rd day of December, 2021**

Proposed Revisions to State Plan Pages

The property tax component is facility specific, i.e., based on actual property taxes assessed and paid.

Provider Assessment

The provider assessment is an amount equal to 5.82% of the sum of the above components to recognize the state's Provider Assessment Tax. Should the state's 5.5% Provider Assessment Tax rate change, this add-on will be adjusted accordingly. Below is an example of the adjustment to the add-on in the provider tax were to be changed to 4.0%.

1. Per diem base rate (excl. provider tax): \$200.00
2. Calculate per diem rate with 4.0% tax: \$200.00 divided by .96 = \$208.33
3. Calculate provider tax amount: \$208.33 minus \$200.00 = \$8.33
4. Calculate add-on percent: \$8.33 divided by \$200.00 = 4.165%
5. Calculate provider tax add-on: \$200.00 times 4.165% = \$8.33
6. Calculate per diem rate incl. tax: \$200.00 plus \$8.33 = \$208.33

B. Adjustments to Base Rate

Patient Acuity

~~The RUG-IV case-mix classification system Recognition- recognition of patient acuity in the payment methodology. is being incorporated through the use of a RUG-IV case-mix classification system.~~ The case-mix classification system uses clinical data from the MDS assessment to assign a case-mix group to each patient that is then used to adjust a portion of the per diem payment based on patient resource use. (This is similar to how Medicare reimburses for care in a skilled nursing facility.) Each patient ~~will be~~ is assigned one of forty-eight (48) RUG categories ~~supplied by the provider or by the~~ grouper based on his/her MDS record. A patient's MDS record ~~must is to~~ be updated every ninety (90) days or in the event of a significant change in condition. Acuity will be based on the patient specific RUG category, i.e. full RUG-based system. The acuity factor (RUG weight) ~~will be~~ is applied only to the Direct Nursing Care component.

To allow for necessary modifications to the state's MMIS claims processing system, full implementation of the RUG-based process will be implemented on June 1, 2013. In the interim, a facility specific case mix index was being used.

Price Increases

Unless otherwise stated, the components of the base per diem rate will be increased annually, effective October 1 of each year, as follows:

1. Direct Nursing, Other Direct Care, and Indirect Care:

~~Global Insight/CMS Skilled Nursing Facility Market Basket-On an annual basis, unless otherwise specified, this component of the base per diem rate will be adjusted by the Center for Medicare and~~

Medicaid Services (CMS) Skilled Nursing Facility Prospective Payment System Market Basket Update without productivity adjustment.

The adjustment will be applied annually on October 1 (the start of a new federal fiscal year), using the CMS' actual regulatory -market basket update without productivity adjustment for the previous federal fiscal year.

In addition to the annual nursing home inflation index adjustment, there shall be a base rate staffing ~~22~~ adjustment of one-half percent (0.5%) on October 1, 2021, one percent (1.0%) on October 1, 2022, ~~23~~ and one and one-half percent (1.5%) on October 1, 2023.

Effective October 1, 2021, eighty percent (80%) of any rate increase that results from application of the inflation index to the direct-care rate adjusted for resident acuity and an indirect-care rate comprised of a base per diem for all facilities shall be dedicated to increase compensation for all eligible direct-care workers in the following manner on October 1, of each year:

(i) compensation increases shall include base salary or hourly wage increases, benefits, other compensation, and associated payroll tax increases for eligible direct-care workers. This application of the inflation index shall apply for Medicaid reimbursement in nursing facilities for both managed care and fee-for-service. For purposes of this subsection, direct-care staff shall include registered nurses (RNs), licensed practical nurses (LPNs), certified nursing assistants (CNAs), certified medication technicians, licensed physical therapists, licensed occupational therapists, licensed speech-language pathologists, mental health workers who are also certified nurse assistants, physical therapist assistants, housekeeping staff, laundry staff, dietary staff or other similar employees providing direct-care services; provided, however that this definition of direct-care staff shall not include: RNs and LPNs who are classified as "exempt employees" under the federal Fair Labor Standards Act (29 U.S.C. § 201 et seq.); or CNAs, certified medication technicians, RNs or LPNs who are contracted or subcontracted through a third-party vendor or staffing agency.

(ii) By July 31, 2022 -and by July 31st of each year thereafter, nursing facilities shall submit to the secretary or designee, a certification of compliance with increased compensation for all eligible direct care works that results from the inflation index applied on October 1. A collective bargaining agreement can be used in lieu of the certification form for represented employees. All data reported on the compliance form is subject to review and audit by EOHHS. The audits may include field or desk audits, and facilities may be required to provide additional supporting documents including, but not limited to, payroll records.

(iii) Any facility that does not comply with the terms of certification shall be subjected to a clawback of the unspent or impermissibly spent funds, paid by the nursing facility to the state, in the amount of increased reimbursement subject to this provision that was not expended in compliance with that certification and a twenty-five percent (25%) penalty based upon the amount of unspent or impermissibly spent funds, paid by the nursing facility to the state, in the amount of increased reimbursement subject to this provision that was not expended in compliance with that certification

(iv) In any calendar year where no inflationary index is applied, eighty percent (80%) of the base rate staffing adjustment in that calendar year pursuant to state law shall be dedicated to increase compensation for all eligible direct-care workers in the manner referenced in subsections (i), (ii), and (iii) of this section.

Each facility shall have the necessary nursing personnel (licensed and non-licensed) in sufficient numbers on a twenty-four (24) hour basis, to assess the needs of residents, to develop and implement resident care plans, to provide direct resident care services, and to perform other related activities to maintain the health, safety, and welfare of residents. The facility shall have a registered nurse on the premises twenty-four (24) hours a day.

Effective, January 1, 2022, nursing facilities shall provide a quarterly minimum average of three and fifty-eight hundredths (3.58) hours of direct nursing care per resident, per day, of which at least two and forty-four hundredths (2.44) hours shall be provided by certified nurse assistants.

Effective January 1, 2023, nursing facilities shall provide a quarterly minimum of three and eighty-one hundredths (3.81) hours of direct nursing care per resident, per day, of which at least two and six-tenths (2.6) hours shall be provided by certified nurse assistants. Director of nursing hours and nursing staff hours spent on administrative duties or non- direct caregiving tasks are excluded and may not be counted toward compliance with the minimum staffing hours requirement in this section. The minimum hours of direct nursing care requirements shall be minimum standards only. Nursing facilities shall employ, and schedule additional staff as needed to ensure quality resident care based on the needs of individual residents and to ensure compliance with all relevant state and federal staffing requirements.

For facilities that have an offense in three (3) consecutive quarters, The State Medicaid Agency shall deny any further Medicaid Assistance payments with respect to all individuals entitled to benefits who are admitted to the facility on or after January 1, 2022 or shall freeze admissions of new residents.

The penalty shall be imposed regardless of whether the facility has committed other -violations of this chapter during the same period that the staffing offense occurred. The penalty may not- be waived except: No monetary penalty may be issued for noncompliance with the increase in the standard set forth in state law from January 1, 2023, to March 31, 2023; The State Survey Agency has the discretion to determine the gravity of the violation in situations where there is no more than a ten percent (10%) deviation from the staffing requirements and make appropriate adjustments to the penalty.

Per state law the State Survey Agency has discretion to waive the penalty when unforeseen circumstances have occurred that resulted in call-offs of scheduled staff. This provision shall be applied no more than two (2) times per calendar year.

The State Survey Agency will determine when a nursing facility has come back into compliance with direct care minimum staffing levels as follows:

- (i) Upon written notification by the State Survey Agency of a nursing facility's noncompliance for three (3) consecutive quarters, EOHHS will send a letter to the nursing facility providing written notification of an imposed enforcement action (i.e., freeze on admissions of new Medicaid nursing facility residents). The State Survey Agency will be provided with a copy of the notification;
- (ii) The State Survey Agency will provide written notification to the nursing facility of the opportunity to correct the staffing deficiency(ies) and the need to submit a written plan of correction;
- (iii) The nursing facility's plan of correction will constitute their Credible Allegation of Compliance;
- (iv) Upon receipt of the Credible Allegation of Compliance/ plan of correction, the State Survey Agency will obtain further evidence of compliance and/ or complete an inspection to verify staffing levels and compliance with the plan of correction;
- (v) If all deficiencies are corrected, the State Survey Agency so notices the State Medicaid Agency in writing that the freeze on admissions of new Medicaid nursing facility residents for the previously non-compliant facility is lifted.

2. Fair Rental Value:

~~Global Insight Nursing Home Capital Cost Index~~

IHS Markit Healthcare Cost Review Ssecond-quarter report, Skilled Nursing Facility Total Market Basket FY Table, Capital Costs %MOVAVG, third quarter.

3. Property Taxes:

Facility specific property tax payments

The Fair Rental Value rate for each nursing home was most recently increased effective 7/1/2012. The Property Tax rates are based on allowable tax payments and total patient days reported in each facility's most recently filed cost report.