



Responses to Public Comments: Nursing Home Base Rate Staffing Adjustment, Minimum Staffing Compliance, Wage Pass-Through Requirements and Payment Methodology Updates

Public Comment Period September 22, 2021 – October 29, 2021

Category	Nature of the Comments	EOHHS' Response
<p>Productivity Adjustment</p>	<ol style="list-style-type: none"> 1. The proposed amendment will negatively impact the (nursing home) industry by applying the CMS Skilled Nursing Facility Prospective Payment System Market Basket Update Less Productivity Adjustment 2. Congress established the “Productivity Adjustment” for use in Medicare not Medicaid. The multifactor productivity adjustment is used by the federal government to calculate payments for physicians, hospitals, and skilled nursing facilities. It should not be applied to Medicaid rates. Rhode Island would be the only state that uses a “productivity” adjuster with the CMS Skilled Nursing Facility Prospective Payment System Market Basket Update. 3. EOHHS is seeking to impose a “rate cut” via the regulatory process. The RIGL does not provide for the use of a productivity adjustment in the annual inflationary index applied. If applied, would decrease reimbursement by .5% per year and result in an “automatic annual reimbursement cut”. The “productivity adjustment” must be removed for the proposed State Plan Amendment. 	<p>EOHHS does not seek to impose a rate cut via the regulatory process. The General Assembly authorizes the amount of the final rate adjustment. Current law and the State Plan were ambiguous on exclusion or inclusion of a productivity adjustment and EOHHS sought clarity for the benefit of all stakeholders.</p> <ul style="list-style-type: none"> • RIGL § 40-8-19(2)(vii) notes that there shall be an “Adjustment of rates by the change in a recognized national nursing home inflation index to be applied...” • The State Plan notes “Global Insight/CMS Skilled Nursing Facility” Market Basket. • EOHHS’ historical practice varied on inclusion or exclusion of the adjustment due to the ambiguity, necessitating this state plan amendment for clarity <p>As noted in our previous Caseload testimony, in addition to the lack of clarity on the productivity adjustment, current law and the State Plan do not state if EOHHS should use forecasted or actual market basket regulation, and do not specify what issue date of the inflationary index to use.</p> <p>After this state plan amendment was posted for public comment, the Caseload Estimating Conference’s conferees clarified for EOHHS that their interpretation of state law is that EOHHS should be excluding the productivity adjustment.</p> <p>Based on this information, EOHHS will retract the proposed State Plan Amendment that includes the productivity adjustment and repost a revised State Plan Amendment including the other points of clarification for public review.</p>
<p>Minimum Staffing Payment Requirements</p>	<ol style="list-style-type: none"> 4. Can EOHHS clarify if “medication technicians/medication aides” hours count towards the required 2.44 hours that must be provided by certified nurse assistants (CNAs). 	<p>R.I. Gen. Laws section 23-17.5-32, states that 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.</p> <p>The “direct nursing care” can be provided by any type of “direct caregiver”; however, 2.44 hours must be provided by a certified nurse assistant, as medication technicians and nursing assistants are listed as separate classes of direct caregivers. To directly answer the question asked, medication technician hours cannot count towards the required 2.44 hours. The Rhode Island Department of Health (RIDOH) is the regulatory agency for the implementation of this section of the RIGL. EOHHS encourages the public to direct further comments on this topic to RIDOH.</p>

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Fair Rental Value	<p>5. The change in the cost index used for Fair Rental Value (FRV) is difficult to identify and the rationale behind the changing the index was not provided.</p> <p>6. There are alternative approaches for calculating the FRV. There should be discussions around using alternative FRV calculations that would better support EOHHS' LTTS Resiliency initiatives</p>	<p>The proposed amendment does not change the current method of determining the rate of the annual Fair Rental Value (FRV) adjustment; it seeks to clarify current process. As-is, the Principles of Reimbursement state: "Global Insight Nursing Home Capital Cost Index" Global Insight refers to the IHS Markit Healthcare Cost Review, which is a quarterly publication. This SPA clarifies which release and time period to utilize each year to promote continuity in its rate determination process and clarity for stakeholders.</p> <p>EOHHS is aware that there are alternative approaches to calculating the base FRV. There is a difference between calculating the base FRV value (which was initially done at the time of conversion to the price-based reimbursement system several years ago) and providing an annual inflationary adjustment to the FRV. This amendment addresses the inflation; it does not address the base FRV values for nursing facilities, which were then inflated annually.</p>
Wage Pass-Through Requirement	<p>7. EOHHS should establish a baseline and comparison period for the new wage-pass through requirement, at least for year one, that is similar to the approach used in 2016 when the last wage-pass through certification process occurred.</p> <p>8. The wage pass-through requirement is not financially feasible due to the current costs of the COVID-19 pandemic, labor shortages and current Medicaid reimbursement rates.</p> <p>9. The additional .5% labor add-on is "inadequate" to achieve staffing targets in FY 22 and there will be a direct-care funding shortfall of \$9.5 million in FY 22.</p> <p>10. The .5% labor add-on payment will be retroactively applied and will force providers to spend money on wage pass throughs in the fourth quarter of 2021 without any reimbursement.</p>	<p>The Nursing Home Staffing and Quality Care Act stipulates the wage pass-through requirements and the amounts of the additional rate adjustments. EOHHS must adhere to the provisions of the law. The 0.5% effective 10/1/21 is specifically cited in the law. The law also makes each year the new baseline for comparison for each successive year.</p>
Enforcement Actions	<p>11. The enforcement actions of Medicaid clawbacks, payment withholds, and admission freezes is draconian and will impact access to care at nursing facilities and do nothing to enhance the quality of care.</p>	<p>The Nursing Home Staffing and Quality Care Act stipulates the wage pass-through requirements and the amounts of the additional rate adjustments. EOHHS must adhere to the provisions of the law.</p>
Rearray of Costs	<p>12. EOHHS is also not complying with the Medicaid Reimbursement Statute and the requirement to conduct "[a] rearrray of costs for all facilities every three (3) years beginning October, 2015". R.I. Gen. Laws § 40-8-19(a)(2)(iii)</p>	<p>The proposed amendment does not address this topic, and the comment is not applicable to the current amendment.</p>
Hospital Length of Stays and Discharges	<p>13. The proposed amendment would have a direct effect on hospitals and further delay patient discharges to nursing homes. The COVID-19 pandemic has increased length of stays at hospitals and any action by EOHHS that reduces the capacity of hospitals to discharge patients would "exacerbate" the problem.</p>	<p>EOHHS has worked closely with healthcare providers, partner state agencies and CMS to support hospitals and nursing homes through the challenges of the COVID-19 pandemic. The Nursing Home Staffing and Quality Care Act stipulates specific new requirements and associated penalties per state law for nursing homes and it is outside of the purview of EOHHS to determine what impact the law will have on hospital discharges to nursing homes.</p>

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		<p>In October 2021, the Caseload Estimating Conferees clarified for EOHHS that the Conferees preferred an estimate excluding the productivity adjustment. EOHHS will retract the currently proposed State Plan amendment that includes the productivity adjustment and repost a revised State Plan Amendment for public review.</p>