



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration
BUDGET OFFICE
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To: The Honorable Steven M. Costantino
Chairman, House Finance Committee

The Honorable Daniel DaPonte
Chairman, Senate Finance Committee

From: Rosemary Booth Gallogly
Executive Director/State Budget Officer

Date: February 13, 2009

Subject: Revision to Article 37 of the FY 2009 Supplemental Appropriation Act (09-H-5019)

The Governor requests a change to Article 37 of the FY 2009 Supplemental Appropriations Act. The current version of Article 37 provides the statutory change necessary to defer the nursing facility COLA from April 1, 2009 to July 1, 2009. The enclosed amended version maintains this provision, but adds a subdivision (9) to RIGL 40-8-19 to effect a 5 percent reduction to the reimbursement rate paid to nursing facilities for Medicaid-eligible residents. Although attendant savings from this rate reduction are currently embedded in Article 1, neither the Budget Office nor the Department of Human Services was cognizant of the need for any conforming change to general law at the time of budget submission. Since that time, the Department of Human Services has determined that the addition of new statutory language is advisable. The Governor therefore submits this revision out of an abundance of caution.

If you have any questions regarding this article, please feel free to call me at 222-6300 or Daniel Orgel at 222-2329.

RBG: sm09-121

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REVISED ARTICLE 37

RELATING TO NURSING FACILITIES

SECTION 1. Section 40-8-19 of the General Laws in Chapter 40-8 entitled "Medical Assistance" is hereby amended to read as follows:

§ 40-8-19 Rates of payment to nursing facilities. – (a) *Rate reform.* The rates to be paid by the state to nursing facilities licensed pursuant to chapter 17 of title 23, and certified to participate in the Title XIX Medicaid program for services rendered to Medicaid-eligible residents, shall be reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in accordance with 42 U.S.C. § 1396a(a)(13). The department of human services shall promulgate or modify the principles of reimbursement for nursing facilities currently in effect on July 1, 2003 to be consistent with the provisions of this section and Title XIX, 42 U.S.C. § 1396 et seq., of the Social Security Act.

(b) *Rate reform.* Subject to the phase-in provisions in subsections (c) and (d), the department shall, on or before October 1, 2005, modify the principles of reimbursement for nursing facilities to include the following elements:

- (1) Annual base years;
- (2) Four (4) cost centers: direct labor, property, other operating, and pass through items;
- (3) Re-array of costs of all facilities in the labor and other operating cost centers every three (3) years beginning with calendar year 2002;
- (4) A ceiling maximum for allowable costs in the direct labor cost center to be established by the department between one hundred ten percent (110%) and one hundred twenty-five percent (125%) of the median for all facilities for the most recent array year.
- (5) A ceiling maximum for allowable costs in the other operating cost center to be established by the department between ninety percent (90%) and one hundred fifteen percent (115%) of the median for all facilities for the most recent array year;

(6) Adjustment of costs and ceiling maximums by the increase in the National Nursing Home Price Index ("NNHPI") for the direct labor cost center and the other operating cost center for year between array years; such adjustments to be applied on October 1st of each year beginning October 1, 2003 for the direct labor cost center and October 1, 2005 for the other operating cost center, except for the fiscal year beginning July 1, 2006 for which the price index shall be applied on February 1, 2007 and for the fiscal year beginning October 1, 2007 for which the adjustment of costs and ceiling maximums shall be one and one-tenth percent (1.1%). For the fiscal year beginning July 1, 2008, the price index shall be applied on ~~April~~ July 1, 2009.

(7) Application of a fair rental value system to be developed by the department for calculating allowable reimbursement for the property cost center;

(8) Such quality of care and cost containment incentives as may be established by departmental regulations.

(9) Notwithstanding the above provisions, for FY 2009 and FY 2010, the department is authorized to reduce the per diem room and board rate calculated in accordance with the principles of reimbursement as described above, paid to the nursing facilities certified to participate in the Title XIX Medicaid program for services rendered to Medicaid-eligible residents by five percent (5%). This reduction is deemed to be reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in accordance with 42 U.S.C. § 1396a(a)(13).

(c) Phase I Implementation. The department shall file a state plan amendment with the U.S. Department of Health and Human Services on or before August 1, 2003 to modify the principles of reimbursement for nursing facilities, to be effective on October 1, 2003, or as soon thereafter as is authorized by an approved state plan amendment, to establish the direct labor cost center and the pass through items cost center utilizing calendar year 2002 cost data, and to apply the ceiling maximums in subsections (b)(4) and (b)(5). Nursing facilities whose allowable 2002 direct labor costs are below the median in the direct labor cost center may make application to the

department for a direct labor cost interim payment adjustment equal to twenty-five percent (25%) of the amount such allowable 2002 direct labor costs are below the median in the direct labor cost center, provided that the interim payment adjustment granted by the department on or after October 1, 2003 must be expended by the facility on expenses allowable within the direct labor cost center, and any portion of the interim payment not expended on allowable direct labor cost center expenses shall be subject to retroactive adjustment and recoupment by the department upon the department's determination of a final direct labor payment adjustment after review of the facility's actual direct labor expenditures. The final direct labor payment adjustment will be included in the facility's October 1, 2004 rate until the facility's next base year.

(d) Phase II Implementation. The department shall file a state plan amendment with the U.S. Department of Health and Human Services to modify the principles of reimbursement for nursing facilities, to be effective on September 1, 2004, or as soon thereafter as is authorized by an approved state plan amendment, to establish a fair rental value system for calculating allowable reimbursement for the property cost center in accordance with subsection (b)(7); provided, however, that no facility shall receive a payment as of September 1, 2004 for property-related expenses pursuant to the fair rental value system that is less than the property-related payment they would have received for the other property-related ("OPR") cost center system in effect as of June 30, 2004.

SECTION 2. This article shall take effect upon passage.