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State/Territory Name: Rhode Island

State Plan Amendment (SPA) 21-0015

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS 179 Form/Summary Form (with 179-like data)
- 3) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S3-14-28
Baltimore, Maryland 21244-1850



Financial Management Group

June 7, 2022

Womazetta Jones, Secretary
Executive Office of Health and Human Services
State of Rhode Island
3 West Road, Virks Building
Cranston, RI 02920

RE: Rhode Island 21-0015

Dear Secretary Jones:

We have reviewed the proposed amendment to Attachment 4.19-D of your Medicaid State plan submitted under transmittal number (TN) 21-0015. Effective October 1, 2021, this amendment increases nursing facility rates establishing new minimum staffing and wage requirements, and base rate staffing adjustments each year through 2023. This amendment also makes administrative revisions to the plan language.

We conducted our review of your submittal according to the statutory requirements at sections 1902(a)(2), 1902(a)(13), 1902(a)(30) and 1903(a) of the Social Security Act and the implementing Federal regulations at 42 CFR 447 Subpart C.

This is to inform you that Medicaid State plan amendment TN 21-0015 is approved effective October 1, 2021. The CMS-179 and the amended plan page(s) are attached.

As described in the state's letter to CMS dated April 29, 2022 regarding its Hospital Licensing Fee (HLF) and in CMS's response letter dated May 19, 2022, please note that CMS's approval of this State Plan Amendment (SPA) whose non-federal share source may include the HLF relates only to the requested change in payment methodology, not the source of non-federal share. Approval of this SPA does not relieve the state of its responsibility to comply with federal laws and regulations, and to ensure that claims for federal financial participation are consistent with all applicable requirements.

If you have any additional questions or need further assistance, please contact Novena James-Hailey at (617) 565-1291 or Novena.JamesHailey@cms.hhs.gov.

Sincerely,



Rory Howe
Director

Enclosures

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

1. TRANSMITTAL NUMBER:
21-0015

2. STATE
RI

FOR: CENTERS FOR MEDICARE AND MEDICAID SERVICES

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE
SOCIAL SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR
CENTERS FOR MEDICARE AND MEDICAID SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
October 1, 2021

5. TYPE OF PLAN MATERIAL (*Check One*):

NEW STATE PLAN AMENDMENT TO BE CONSIDERED AS NEW PLAN **XX** AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (*Separate Transmittal for each amendment*)

6. FEDERAL STATUTE/REGULATION CITATION:

42 CFR 447 Subpart C

7. FEDERAL BUDGET IMPACT:

a. FFY 2022 \$ 919,474
b. FFY 2023 \$ 1,776,540

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Attachment 4.19-D page 9
Attachment 4.19-D page 9a
Attachment 4.19-D page 9b
Attachment 4.19-D page 9c

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (*If Applicable*):

Attachment 4.19-D page 9
NEW
NEW
~~Attachment 4.19-D page 9~~ New

10. SUBJECT OF AMENDMENT:

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

11. GOVERNOR'S REVIEW (*Check One*):

GOVERNOR'S OFFICE REPORTED NO COMMENT
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

XX OTHER, AS SPECIFIED:
See Attached Letter

12. SIGNATURE OF STATE AGENCY OFFICIAL:

[Redacted Signature]

16. RETURN TO:

EOHHS
3 West Rd, Virks Building
Cranston, RI 02920

13. TYPED NAME: Womazetta Jones

14. TITLE: Secretary

15. DATE SUBMITTED: December 3, 2021

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED: December 3, 2021

18. DATE APPROVED:
June 7, 2022

PLAN APPROVED – ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:
October 1, 2021

REGIONAL OFFICIAL:

[Redacted Name]

21. TYPED NAME: Rory Howe

22. TITLE: Director, Financial Management Group

23. REMARKS:

Pen and ink changes in box # 9 per state request.

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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 of patient acuity in the payment methodology. 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 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 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) 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:

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.

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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 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.

Effective October 1, 2021, eighty percent (80%) of any rate increase that results from application of the inflation index to a) the direct-care rate adjusted for resident acuity and b) the indirect-care rate, which is 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 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

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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

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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 non-compliance 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.
- (vi) Minimum staffing requirements and compliance enforcement by the State Survey Agency meet Federal Survey and Certification standards and requirement

2. Fair Rental Value:

IHS Markit Healthcare Cost Review second-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.