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May 5, 2026

The Honorable Marvin L. Abney, Chairman
House Committee on Finance
Room 35 – State House
Providence, RI 02903

RE: 2026 – H 8218 – An Act Relating to Human Services – Medical Assistance—Long -Term Care Service and Finance Reform

Dear Chairman Abney:

The Executive Office of Health and Human Services would like to share information and concerns relating to **H 8218.**

EOHHS understands that the purpose of the bill is to increase access to home and community-based services (HCBS) by increasing payments primarily for home care services. While EOHHS supports efforts to rebalance the long-term services and supports system and enhance access to HCBS, this legislation would require federal approval, regulatory changes, and substantial funding to support rate increases on this scale, implement required system changes, and establish appropriate program integrity controls to mitigate the risk of overpayments. EOHHS generally does not support increasing payments while also reducing reporting and oversight, particularly for moderate and high-risk providers. EOHHS describes the specific concerns we have below.

Regarding the **OHIC rate review**, EOHHS recommends clarifying that the OHIC-related rate increase specifically applies to home care, home nursing care, and hospice providers, consistent with the stated intent, clauses (f)(3)(i)-(iv), and the second sentence of clause (v). The existing reference to "this subsection" could also include assisted living, adult day, and adult supportive-care homes included in subsection (f) which is broader than what appears to be intended. Rate increases are subject to CMS approval and legislative appropriations. Given the timing of legislative session and the requirements for posting and submitting these requests to CMS, a July 1 effective date is a challenge, exacerbated by recent delays in the CMS approval process. Accordingly, EOHHS requests an effective date of October 1 or later, to allow time to implement these changes. Finally, as it applies to the 2025 OHIC rate review report, this provision conflicts with the Governor's budget recommendation which implements the OHIC-recommended rate adjustments over a two-year period beginning October 1, 2026. EOHHS requests clarity regarding this conflict or, alternatively, specifying that the provision in **H 8218** applies to new OHIC reports released after the passage of the bill, not including reports that have already been released.

Pertaining to the **rates language**, EOHHS has already established the FFS rates as the floor for managed care with respect to home health and home care services, including the existing modifiers and enhancements. This legislation would establish a new state directed payment (SDP) for hospice services. Under current federal regulations, certain SDPs cannot exceed the Medicare equivalent. Currently, this does not include home health and hospice services; however, in response to directives under HR-1, CMS is updating their SDP guidance and is likely to expand the scope of services subject to this requirement, which creates a potential risk if any OHIC recommendation subject to this provision exceeds the Medicare rate.

With respect to the **"overtime modifier"**, EOHHS requests clarifying language regarding the value of the modifier. It appears the intent is to pay a total of 1.5 times the base rate for overtime shifts (i.e., the modifier is 50% of the rate, added on to the base rate), consistent with the general "time and a half" rule for overtime pay. However, as written, the language specifies that the modifier itself is 1.5 times the base rate (i.e., 150% added on to the base rate for a total payment of 2.5 times the base rate for an overtime shift). Regardless of the amount of the modifier, EOHHS would have to restructure the billing system to track individual shifts per week to determine whether an individual worked overtime or, alternatively, dedicate significant staff resources to regularly audit this modifier to ensure it is used appropriately. Similar to the above, EOHHS also requests a later effective date than July 1, particularly in the case of a new modifier which requires the establishment of new codes and billing processes. EOHHS would not be able to set these codes up in the billing system until after CMS approval is obtained, which may take several months.

Regarding the "**shift differential modifier**", EOHHS requests clarifying language regarding the value of the modifier. The bill establishes conflicting modifiers for the shift differential. The text includes a rate of one and one-half (1.5) times the base rate for the shift differential (evening, weekend, and holiday shifts) and two (2) times the base rate for "overnight, weekends, and shifts during federal and state recognized holidays." These establish different rates for the same modifier. Similar to the overtime modifier, the language is unclear regarding whether the proposed modifier includes or is in addition to the base rate. In addition, by directing EOHHS to increase the modifier, it appears that the proposed increase is in addition to the existing modifier, rather than a replacement, which increases the risk of overpayments.

Relating to the "**pass-through requirement**", the elimination of the pass-through requirement for the shift differential modifier defeats the intent of the modifier, which is to incentivize staff to accept shifts outside of traditional work hours which, in turn, promotes choice and flexibility for participants receiving services. EOHHS recommends maintaining or revising the existing language to require providers to recognize additional pay for staff who work these shifts, considering the substantial increase in the modifier.

With respect to the "**behavioral health enhancement**", EOHHS appreciates that the legislation maintains the pass-through requirement for staff; however, the legislation introduces ambiguity and audit risk. The proposed language for the enhancement is unclear because "provider" is not defined, nor is "participating". Because the enhancement is paid at the provider, rather than the individual level, this could be read to require 100% of provider staff to participate in the training, or as little as one staff person on behalf of the provider. This ambiguity creates exposure to risk of fraud, waste, and abuse. This is why the current program establishes a 30% threshold and certification requirement which serves as a written, validated record of the behavioral health training. Furthermore, compliance with the current BH enhancement pass through and reporting requirements has been low, with only 34% of providers (representing 24% of billing activity) meeting the statutory and regulatory pass-through requirements in the most recent reporting year. EOHHS is exploring options to improve compliance in this area and does not recommend changes to the behavioral health enhancement until a full review can be completed.

Concerning "**travel costs**", 29 C.F.R. Part 785 applies to employers covered by the Fair Labor Standards Act. EOHHS is a payor and is not the employer of record for home care services. It is the provider's responsibility to pay staff for travel time in accordance with 29 C.F.R. Part 785. Reimbursement for travel time by Medicaid is optional. If intended to be specific to personal care and homemaker services, transportation time is already built into the independent rate model developed by OHIC.

Finally, pertaining to the "**rural community modifier**", EOHHS recommends clarifying that the value of the modifier is 10% of the base rate and applies only to personal care and homemaker services. In addition, establishing this modifier would require substantial system edits to properly validate when claims are paid for a beneficiary living in a rural community. Similar to the proposed overtime modifier, establishing the new rate and system features would not be possible by July 1 due to the need for lead time for CMS approval and system implementation.

EOHHS would welcome any discussion about **H 8218**, and staff are available to assist with any questions or concerns.

Sincerely,

John J. Bonin
Medicaid Program Deputy Director, Executive Office of Health and Human Services

Cc: Honorable Members of the House Committee on Finance
Honorable Patricia A. Serpa
Nicole McCarty, Esq., Chief Legal Counsel to the Speaker of the House