

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: April 9, 2018)

ALPINE NURSING HOME, INC., d/b/a ALPINE :  
REST HOME; BANNISTER OPERATIONS :  
ASSOCIATES LLC, d/b/a BANNISTER :  
CENTER FOR REHABILITATION AND :  
HEALTH CARE; BURRILLVILLE HEALTH :  
CENTER ASSOCIATES LIMITED, d/b/a :  
BAYBERRY COMMONS; BERKSHIRE :  
PLACE, LTD.; BRENTWOOD NURSING :  
HOME, INC.; MEDICAL HOMES OF :  
RHODE ISLAND, INC., d/b/a BRIARCLIFFE :  
MANOR; CHARLESGATE NURSING CENTER; :  
CORTLAND PLACE HEALTH CENTER, INC.; :  
10 WOODLAND DRIVE OPERATIONS LLC, :  
d/b/a COVENTRY SKILLED NURSING AND :  
REHABILITATION; CRA-MAR :  
CORPORATION, d/b/a CRA-MAR MEADOWS; :  
CRESTWOOD NURSING & REHABILITATION :  
CENTER, INC.; 198 WATERMAN :  
AVENUE, LLC, d/b/a EASTGATE NURSING & :  
REHABILITATION CENTER; :  
100 WAMPANOAG TRAIL OPERATING :  
COMPANY, LLC, d/b/a ELDERWOOD AT :  
RIVERSIDE; 981 KINGS TOWN ROAD :  
OPERATING COMPANY, LLC, d/b/a :  
ELDERWOOD OF SCALLOP SHELL AT :  
WAKEFIELD AND SCALLOP SHELL :  
NURSING AND REHABILITATION CENTER; :  
PROSPECT CHARTERCARE :  
ELMHURST, LLC, d/b/a ELMHURST :  
EXTENDED CARE FACILITY; ELMWOOD :  
HEALTH CENTER, INC., d/b/a ELMWOOD :  
HEALTH CENTER AND ELMWOOD :  
NURSING & REHABILITATION CENTER; :  
LIFE CARE CENTERS OF :  
AMERICA, INC., d/b/a EVERGREEN HOUSE :  
HEALTH CENTER; THE FRIENDLY :  
HOME, INC.; GRACE BARKER NURSING :  
CENTER, INC., d/b/a GRACE BARKER :  
HEALTH; 333 GREEN END AVENUE :  
OPERATIONS LLC, d/b/a GRAND ISLANDER :

**CENTER; 100 CHAMBERS STREET :  
 OPERATIONS LLC, d/b/a GRANDVIEW :  
 CENTER; 732 PUTNAM PIKE :  
 OPERATIONS LLC, d/b/a GREENVILLE :  
 SKILLED NURSING AND REHABILITATION; :  
 HARBORSIDE RHODE ISLAND LIMITED :  
 PARTNERSHIP, d/b/a GREENWOOD CENTER; :  
 HATTIE IDE CHAFFEE NURSING HOME; :  
 HEATHERWOOD RI LLC, d/b/a :  
 HEATHERWOOD REHABILITATION & :  
 HEALTHCARE CENTER; ASLC RI II, LLC, :  
 d/b/a HEBERT HEALTH CENTER; :  
 80 DOUGLAS PIKE, LLC, d/b/a :  
 HERITAGE HILLS; HOLIDAY RETIREMENT :  
 HOME INC., d/b/a HRC CORP.; HOPKINS :  
 MANOR, LTD.; 660 COMMONWEALTH :  
 AVENUE OPERATIONS LLC, d/b/a KENT :  
 REGENCY; SHADY ACRES :  
 OPERATIONS LLC, d/b/a KINGSTON CENTER :  
 FOR REHABILITATION AND HEALTH CARE; :  
 UNITED METHODIST HEALTH CARE :  
 CENTER, d/b/a LINN HEALTH CARE CENTER; :  
 THE MANSION, INC.; RYAN HEALTH :  
 CENTER, INC., d/b/a MORGAN HEALTH :  
 CENTER; OAK HILL OPERATIONS :  
 ASSOCIATES LLC, d/b/a OAK HILL CENTER :  
 FOR REHABILITATION & HEALTH CARE :  
 AND OAK HILL REHABILITATION & :  
 HEALTH CARE CENTER; OAKLAND :  
 GROVE ASSOCIATES, L.P., d/b/a OAKLAND :  
 GROVE HEALTH CARE CENTER; :  
 ATHENA ORCHARD VIEW LLC, d/b/a :  
 ORCHARD VIEW MANOR REHABILITATION :  
 AND NURSING CENTER; HARKEN, INC., :  
 d/b/a OVERLOOK NURSING HOME; :  
 PARK VIEW OPERATIONS ASSOCIATES LLC, :  
 d/b/a PARK VIEW CENTER FOR :  
 REHABILITATION AND HEALTH CARE; :  
 70 GILL AVENUE OPERATIONS LLC, :  
 d/b/a PAWTUCKET SKILLED NURSING :  
 AND REHABILITATION CENTER; :  
 THE BURRILLVILLE NURSING HOME, INC., :  
 d/b/a PINE GROVE HEALTH CENTER; :  
 RIVERVIEW NURSING HOME, INC., :  
 d/b/a RIVERVIEW HEALTHCARE :  
 COMMUNITY; ROBERTS HEALTH :**

**CENTRE, INC.; ROYAL MIDDLETOWN** :  
**NURSING CENTER LLC; ROYAL** :  
**WESTERLY, LLC; KAR LITTLE BOX, LLC,** :  
**d/b/a SILVER CREEK MANOR;** :  
**CPL (SOUTH COUNTY) LLC, d/b/a SOUTH** :  
**COUNTY NURSING AND REHABILITATION** :  
**CENTER; ALLEN’S HEALTH CENTER, INC.,** :  
**d/b/a SOUTH KINGSTOWN NURSING &** :  
**REHABILITATION CENTER; THE SAINT** :  
**CLARE HOME, d/b/a ST. CLARE-NEWPORT;** :  
**SUMMIT RI SNF LLC, d/b/a SUMMIT** :  
**COMMONS REHABILITATION AND** :  
**HEALTH CARE CENTER; SUNNY VIEW** :  
**NURSING HOME, INC.; TOCKWOTTON** :  
**HOME, d/b/a TOCKWOTTON ON THE** :  
**WATERFRONT; ASLC OPCO RI I, LLC,** :  
**d/b/a TRINITY HEALTH AND** :  
**REHABILITATION CENTER; VILLAGE** :  
**HOUSE CONVALESCENT HOME, INC.,** :  
**d/b/a VILLAGE HOUSE NURSING &** :  
**REHABILITATION CENTER;** :  
**642 METACOM AVENUE OPERATIONS LLC,** :  
**d/b/a WARREN SKILLED NURSING &** :  
**REHABILITATION; WATERVIEW RI** :  
**SNF LLC, d/b/a WATERVIEW VILLA** :  
**REHABILITATION AND HEALTH CARE** :  
**CENTER; WARWICK HEALTH CENTRE, INC.,** :  
**d/b/a WEST SHORE HEALTH CENTER;** :  
**WESTERLY HEALTH CENTER** :  
**ASSOCIATES, L.P.; GREENE ACRES** :  
**HEALTH CENTER, LLC, d/b/a WOODPECKER** :  
**HILL HEALTH CENTER,** :  
**Plaintiffs,** :  
  
**v.** :  
  
**STATE OF RHODE ISLAND EXECUTIVE** :  
**OFFICE OF HEALTH AND HUMAN** :  
**SERVICES and STATE OF RHODE ISLAND** :  
**DEPARTMENT OF HUMAN SERVICES,** :  
**Defendants.** :

C.A. No. PC-2017-3369

## DECISION

**LANPHEAR, J.** This matter is before the Court on Plaintiffs'<sup>1</sup>—a group of fifty-nine skilled nursing facilities (Plaintiffs)—appeal of an Administrative Hearing Decision (the Decision)

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<sup>1</sup> The fifty-nine nursing facility Plaintiffs participating in this action are as follows: Alpine Nursing Home, Inc., d/b/a Alpine Rest Home; Bannister Operations Associates LLC, d/b/a Bannister Center for Rehabilitation and Health Care; Burrillville Health Center Associates Limited, d/b/a Bayberry Commons; Berkshire Place, Ltd.; Brentwood Nursing Home, Inc.; Medical Homes of Rhode Island, Inc., d/b/a Briarcliffe Manor; Charlesgate Nursing Center; Cortland Place Health Center, Inc.; 10 Woodland Drive Operations LLC, d/b/a Coventry Skilled Nursing and Rehabilitation; Cra-Mar Corporation, d/b/a Cra-Mar Meadows; Crestwood Nursing & Rehabilitation Center, Inc.; 198 Waterman Avenue, LLC, d/b/a Eastgate Nursing & Rehabilitation Center; 100 Wampanoag Trail Operating Company, LLC, d/b/a Elderwood at Riverside; 981 Kings Town Road Operating Company, LLC, d/b/a Elderwood of Scallop Shell at Wakefield and Scallop Shell Nursing and Rehabilitation Center; Prospect Chartercare Elmhurst, LLC, d/b/a Elmhurst Extended Care Facility; Elmwood Health Center, Inc., d/b/a Elmwood Health Center and Elmwood Nursing & Rehabilitation Center; Life Care Centers of America, Inc., d/b/a Evergreen House Health Center; The Friendly Home, Inc.; Grace Barker Nursing Center, Inc., d/b/a Grace Barker Health; 333 Green End Avenue Operations LLC, d/b/a Grand Islander Center; 100 Chambers Street Operations LLC, d/b/a Grandview Center; 732 Putnam Pike Operations LLC, d/b/a Greenville Skilled Nursing and Rehabilitation; Harborside Rhode Island Limited Partnership, d/b/a Greenwood Center; Hattie Ide Chaffee Nursing Home; Heatherwood RI LLC, d/b/a Heatherwood Rehabilitation & Healthcare Center; ASLC RI II, LLC, d/b/a Hebert Health Center; 80 Douglas Pike, LLC, d/b/a Heritage Hills; Holiday Retirement Home Inc., d/b/a HRC Corp.; Hopkins Manor, Ltd.; 660 Commonwealth Avenue Operations LLC, d/b/a Kent Regency; Shady Acres Operations LLC, d/b/a Kingston Center for Rehabilitation and Health Care; United Methodist Health Care Center, d/b/a Linn Health Care Center; The Mansion, Inc.; Ryan Health Center, Inc., d/b/a Morgan Health Center; Oak Hill Operations Associates LLC, d/b/a Oak Hill Center for Rehabilitation & Health Care and Oak Hill Rehabilitation & Health Care Center; Oakland Grove Associates, L.P., d/b/a Oakland Grove Health Care Center; Athena Orchard View LLC, d/b/a Orchard View Manor Rehabilitation and Nursing Center; Harken, Inc., d/b/a Overlook Nursing Home; Park View Operations Associates LLC, d/b/a Park View Center for Rehabilitation and Health Care; 70 Gill Avenue Operations LLC, d/b/a Pawtucket Skilled Nursing and Rehabilitation Center; The Burrillville Nursing Home, Inc., d/b/a Pine Grove Health Center; Riverview Nursing Home, Inc., d/b/a Riverview Healthcare Community; Roberts Health Centre, Inc.; Royal Middletown Nursing Center LLC; Royal Westerly, LLC; KAR Little Box, LLC, d/b/a Silver Creek Manor; CPL (South County) LLC, d/b/a South County Nursing and Rehabilitation Center; Allen's Health Center, Inc., d/b/a South Kingstown Nursing & Rehabilitation Center; The Saint Clare Home, d/b/a St. Clare-Newport; Summit RI SNF LLC, d/b/a Summit Commons Rehabilitation and Health Care Center; Sunny View Nursing Home, Inc.; Tockwotton Home, d/b/a Tockwotton on the Waterfront; ASLC OPCO RI I, LLC, d/b/a Trinity Health and Rehabilitation Center; Village House Convalescent Home, Inc., d/b/a Village House Nursing & Rehabilitation Center; 642 Metacom

issued by Appeals Officer Jane Morgan (Hearing Officer) in favor of Defendants, the State of Rhode Island Executive Office of Health and Human Services (EOHHS) and the State of Rhode Island Department of Human Services (collectively, the Defendants). Jurisdiction is pursuant to G.L. 1956 § 42-35-15 of the Administrative Procedures Act.

## I

### **Facts and Travel**

Section 40-8-19 of the Rhode Island General Laws, titled “Rates of payment to nursing facilities” (the Statute) and the Principles of Reimbursement for Nursing Facilities, Attachment 4.19-D to the Rhode Island Medicaid State Plan (the Principles of Reimbursement or the Regulations) govern nursing facility reimbursement rates. The Statute dictates how the reimbursement rates are determined. Long-term care facilities furnish services in accordance with the requirements of the Principles of Reimbursement. The State pays the participating providers of long-term care facility services the amount determined for services furnished by the provider under the Principles of Reimbursement.

The EOHHS is responsible for the management, supervision and regulation of state and federally funded public financial assistance programs, including those for the funding and reimbursement of skilled nursing facilities detailed above. While the Medicaid reimbursement system is rather complex, only the relevant facts regarding the Medicaid reimbursement system need be explained herein.

A brief overview of the Statute’s history is instructive. In the Fiscal Year 2014 Budget, the General Assembly declared that nursing home reimbursements would be connected to an

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Avenue Operations LLC, d/b/a Warren Skilled Nursing & Rehabilitation; Waterview RI SNF LLC, d/b/a Waterview Villa Rehabilitation and Health Care Center; Warwick Health Centre, Inc., d/b/a West Shore Health Center; Westerly Health Center Associates, L.P.; Greene Acres Health Center, LLC, d/b/a Woodpecker Hill Health Center.

“inflation index” which would be set on October 1st of each year. That same year, the General Assembly declared that there would be no rate increase occurring October 1, 2013. Specifically, that year, § 40-8-19(a)(2)(vi) read: “Adjustment of rates by the change in a recognized national nursing home inflation index to be applied on October 1st of each year, beginning October 1, 2012. This adjustment will not occur on October 1, 2013, but will resume on October 1, 2014.” P.L. 2013, ch.144, art. 19.<sup>2</sup>

The 2015 Fiscal Year Budget also rescinded the nursing home reimbursement increases scheduled for October of 2014 by deferring increases to April 1, 2015. The statute (§ 40-8-19(a)(2)(vi)) then stated: “Adjustment of rates by the change in a recognized national nursing home inflation index to be applied on October 1st of each year, beginning October 1, 2012. This adjustment will not occur on October 1, 2013, but will resume on April 1, 2015.” P.L. 2014, ch. 145, art. 18, § 1.

In the 2016 Fiscal Year Budget, the General Assembly enacted two significant amendments to § 40-8-19. The first amendment provided: “Notwithstanding any law to the contrary, for the twelve (12) month period beginning July 1, 2015, Medicaid payment rates for nursing facilities established pursuant to this section shall not exceed ninety-eight percent (98%) of the rates in effect on April 1, 2015.” P.L. 2015, ch. 141, art. 5. Essentially, this amendment (hereinafter, the 98% Provision) provided for a two percent (2%) decrease in the reimbursement rate for a one-year period. Interpretation of this amendment gives rise to this appeal. Additionally, in the same 2016 Fiscal Year Budget, the General Assembly also mandated that the October 1, 2015 rate increase would not occur: “Adjustment of rates by the change in a recognized national nursing home inflation index to be applied on October 1st of each year,

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<sup>2</sup> As § 40-8-9 is amended several times, citations are provided to the Rhode Island Public Laws. The legislation deleted the word “removed” and replaced it with the word “occur.”

beginning October 1, 2012. This adjustment will not occur on October 1, 2013 or October 1, 2015 but will occur on April 1, 2015.” P.L. 2015, ch. 141, art. 5.

By a letter dated August 26, 2015, EOHHS imposed the 98% Provision’s two percent rate deduction on Plaintiffs, with an effective date of August 1, 2015.<sup>3</sup> *See* Exhibit 8, Ex. 4 thereto. On June 30, 2016—the end of the one-year period identified in the 98% Provision—EOHHS did not discontinue or adjust the rate. Instead, the rate reduction implemented through the 98% Provision remained in effect until September 26, 2016,<sup>4</sup> when the Assistant Director, Finance and Contract Management, of EOHHS, issued a notice, with an effective date of October 1, 2016, which incorporated Medicaid fee-for-service per diem Nursing Facility Payment rates (the Rate Notice). Notably, when EOHHS issued the new rate in the Rate Notice, it adjusted the rate using the rate in effect on August 1, 2015 as the base rate.<sup>5</sup> Admin. Hr’g Tr. 4, Mar. 24, 2017.

Subsequently, Plaintiffs appealed the Rate Notice, arguing that EOHHS improperly calculated and implemented the rates contained therein. On October 27, 2016, pursuant to § 40-8-21(b), a Rate Review Conference was held before Deputy Medicaid Director Darren McDonald (Director McDonald). On November 22, 2016, Director McDonald issued a decision denying Plaintiffs’ rate appeals.

Plaintiffs then timely appealed Director McDonald’s decision to the EOHHS Hearing Officer. At the hearings on March 3, 2017 and March 24, 2017, the Hearing Officer undertook

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<sup>3</sup> The temporary rate reduction required federal approval. The delay in that approval caused a delay in implementing the decrease, which is why the effective date in the letter differs from the July 1 date set forth in the 98% Provision.

<sup>4</sup> The Complaint provides that the Rate Notice was dated September 26, 2015, instead of September 26, 2016. Compl. ¶ 64. However, the Rate Notice itself is dated September 26, 2016. *See* Exhibit 8, Ex. 1 thereto. Moreover, Plaintiffs and Defendants’ memoranda, as well as the Administrative Hearing Decision, state September 26, 2016. *See* Pls.’ Mem. at 2; Defs.’ Mem. at 2; Admin. Hr’g Dec. at 3.

<sup>5</sup> The rate in effect on August 1, 2015 comprised the two percent rate cut established by the 98% Provision.

the task of determining whether EOHHS, in setting the reimbursement rate for nursing facility payment rates, properly calculated and implemented the rates in accordance with applicable law. Additionally, the parties disputed which date EOHHS should have used in adjusting the rate. Plaintiffs aver that at the conclusion of the 98% Provision's one-year period, the rate should have been restored to the rate in place on April 1, 2015—the rate in effect prior to the 98% Provision. EOHHS posits that it properly calculated the rates based on the rate in existence on August 1, 2015, which reflected the two percent rate cut the 98% Provision established.

Plaintiffs' appeal revolves around interpretation of the 98% Provision. *See* § 40-8-19(b)(4). At issue is the meaning of the 98% Provision phrase, which reads: “for the twelve-month (12) period beginning July 1, 2015.” Plaintiffs “interpret the language of the [98% Provision] to provide for a retroactive restoration of the rate to that of the higher June 2015 rate, prior to enactment of the [98% Provision.]” Admin. Hr'g Dec. at 4. Essentially, Plaintiffs contend that EOHHS improperly factored the two percent rate reduction into the computation when it calculated rates after June of 2016, rather than using the previously existing higher base rate.<sup>6</sup> Plaintiffs stressed that if the “language is clear on its face, then the plain meaning of the statute must be given effect,” and, as a result, the Hearing Officer impermissibly looked elsewhere to discern legislative intent. *See id.* at 14-15. Nevertheless, Plaintiffs contend that even in considering legislative intent, “there was no need for the General Assembly to explicitly state that rates would return to normal once the [98% Provision] expired; because the [98% Provision] was embedded in the very statute that established the normal rates.” *Id.* at 17. Similarly, Plaintiffs maintain that adding explicit language providing that “once this expires,

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<sup>6</sup> Because the Plaintiffs focused on extensive criticism of state officials in their memorandum, rather than on the relief requested, it is a challenge to construe their contentions. However, the Complaint herein questions whether the Nursing Facility Payment base per diem rate contained in the Rate Notice for the period commencing July 1, 2016 was computed correctly.



existing law will revive itself” was unnecessary because the 98% Provision itself provided an exact time limit of twelve months. *Id.*

To the contrary, EOHHS contends that the language of the 98% Provision, as well as the legislative intent and history, does not provide for restoration. Instead, EOHHS asserts that the 98% Provision allows for an increase of the nursing home rate that will exceed ninety-eight percent of the rates in effect on April 1, 2015 only if EOHHS should deem it appropriate at the next rate adjustment. Admin. Hr’g Dec. at 5. Additionally, EOHHS contends that its calculation of the rate for April 1, 2015 and October 1, 2016 was consistent with § 40-8-19 and the Regulations. *See id.* at 9. EOHHS relies on the legislative history and intent and asserts that it acted in conformity with the statute and the 98% Provision. EOHHS explained that “Petitioners [sic] argument that the Legislature intended for the 2% Per Diem Rate cut to expire is without merit because the Petitioners’ reading of . . . § 40-8-19(b)(4) creates an ‘absurd’ result that is neither in alignment with the statutory framework nor the legislative intent.” *Id.* at 11.

Before the Hearing Officer, Plaintiffs sought relief by way of reversal of rate reduction. They also requested revision of the EOHHS Regulations to restore the Nursing Facility Payment Rates for July 1, 2016 through September 30, 2016 to the rates that were in effect as of April 1, 2015. In the Decision, the Hearing Officer determined: “the [98% Provision] as enacted [wa]s ambiguous in application and full consideration of the legislative intent and construction of the Statute upon which rate setting methodology is based, [wa]s necessary to fully consider whether EOHHS correctly calculated the Nursing Home Rates contained in the Rate Notice.” *Id.* at 19.

Furthermore, the Hearing Officer explained that “the [98% Provision] does not create a temporary exception to the application of [the price-based] method. The [98% Provision] neither addresses nor contemplates changing the statutorily prescribed methodology for calculating

Nursing Home Rates.” *Id.* The Hearing Officer determined that the language of the 98% Provision “does not provide in any way for the restoration of the 2% cut after twelve months and/or the recalculation and reversion of the 2% cut at the end of the twelve (12) month [sic] to the rates in effect April 1, 2015.” *Id.* at 20. The Hearing Officer further explained that the record does not provide “that the Nursing Home rate cut contained in the [98% Provision] is intended to be temporary.” *Id.* The Hearing Officer concluded “that had the Legislature intended for EOHHS to revert to a previous rate it would have amended the Statute at the time of the [98% Provision] to also include such a retroactive rate setting methodology[.]” *Id.*

## II

### Standard of Review

This Court reviews administrative decisions pursuant to § 42-35-15 of the Administrative Procedures Act (the Act). *See Town of Burrillville v. R.I. State Labor Relations Bd.*, 921 A.2d 113, 118 (R.I. 2007) (citing *Rossi v. Emps’ Ret. Sys.*, 895 A.2d 106, 109 (R.I. 2006)); *Arnold v. R.I. Dep’t of Labor and Training Bd. of Review*, 822 A.2d 164, 166 (R.I. 2003)). Section 42-35-15(g) of the Act grants this Court the authority to

“affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

“(1) In violation of constitutional or statutory provisions;

“(2) In excess of the statutory authority of the agency;

“(3) Made upon unlawful procedure;

“(4) Affected by other error or law;

“(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

“(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Sec. § 42-35-15(g).

“[J]udicial review of agency decisions is limited to questions of law and the reviewing court may not make factual findings[.]” *Lee v. R.I. Council 94*, 796 A.2d 1080, 1083 n.1 (R.I.

2002) (citing *Bunch v. Bd. of Review, R.I. Dep't of Emp't and Training*, 690 A.2d 335, 337 (R.I. 1997)). This “Court is confined to a determination of whether there is any legally competent evidence to support the agency’s decision.” *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993) (citing *Barrington Sch. Comm. v. R.I. State Labor Relations Bd.*, 608 A.2d 1126, 1138 (R.I. 1992)). “Legally competent evidence is ‘relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance.’” *Arnold*, 822 A.2d at 167 (quoting *R.I. Temps, Inc. v. Dep't of Labor and Training, Bd. of Review*, 749 A.2d 1121, 1124 (R.I. 2000)). This Court engages in *de novo* review when faced with a question of statutory interpretation. *State v. LaRoche*, 925 A.2d 885, 887 (R.I. 2007) (citing *State v. Oliveira*, 882 A.2d 1097, 1110 (R.I. 2005)).

### III

#### Analysis

At issue is the interpretation of the 98% Provision. *See* § 40-8-19(b)(4). In reviewing the Decision, this Court “must first determine whether the statutory provision at issue is clear and unambiguous.” *Power Test Realty Co. Ltd. P’ship v. Coit*, 134 A.3d 1213, 1219 (R.I. 2016); *see also State v. Diamante*, 83 A.3d 546, 550 (R.I. 2014) (citing *DeMarco v. Travelers Ins. Co.*, 26 A.3d 585, 617 (R.I. 2011)) (“Pursuant to our canons of statutory construction, we first address whether or not the statute in question has a plain meaning and is, as such, unambiguous.”). “When the language of a statute is clear and unambiguous, this Court . . . interpret[s] the statute literally and must give the words of the statute their plain and ordinary meanings.” *State v. Hazard*, 68 A.3d 479, 485 (R.I. 2013) (quoting *Waterman v. Caprio*, 983 A.2d 841, 844 (R.I. 2009)); *see also Unitrust Corp. v. State Dep't of Labor and Training*, 922 A.2d 93, 98 (R.I. 2007) (citing *Moore v. Ballard*, 914 A.2d 487, 490 (R.I. 2007)).

The phrase “notwithstanding any law to the contrary” has a clear, distinct, and precise meaning in legislative drafting. The words are understandable and obvious on their face. They indicate that the attached phrase has priority over the remainder of the law. Regardless of any other law (but for, of course, the Constitution) this law shall control. There is no ambiguity or need for interpretation. “The inclusion of the phrase ‘[n]otwithstanding \*\*\* any other general or special law to the contrary’ clearly expresses the General Assembly’s intent to have [that statute] control . . .” *Cadillac Lounge, LLC v. City of Providence*, 913 A.2d 1039, 1043 (R.I. 2007).

It is no small irony that the Supremacy Clause of the United States Constitution uses nearly identical words. The Supreme Court has held that those words make the federal law supreme over all state law when there is a conflict. *PLIVA v. Mensing*, 564 U.S. 604, 621 (2011). The high court reasoned that there is no need to speculate about the meaning of inconsistent state statutes in an attempt to reconcile the various meanings when this phrase is used. *Id.* at 623. This Court will only “‘apply the rules of statutory construction and examine the statute in its entirety to determine the intent and purpose of the Legislature’” when the statute is ambiguous. *Grasso v. Raimondo*, 177 A.3d 482, 489 (R.I. 2018) (quoting *Diamante*, 83 A.3d at 548). “Ambiguity exists only when a word or phrase in a statute is susceptible of more than one reasonable meaning.” *Drs. Pass & Bertherman, Inc. v. Neighborhood Health Plan of R.I.*, 31 A.3d 1263, 1269 (R.I. 2011). This Court does not find any such ambiguity in the 98% Provision. Rather, the language of the 98% Provision is susceptible of only one interpretation: the 98% Provision is in effect for one year only, beginning July 1, 2015 (*i.e.* “the twelve (12) month period beginning July 1, 2015”). Moreover, the 98% Provision does not contain “a word or phrase . . . susceptible of more than one reasonable meaning.” *See Hazard*, 68 A.3d at 485. The plain language of the statute clearly proclaims that the two percent (2%) reduction of the rates

was instituted “for the twelve (12) month period beginning July 1, 2015.” The 98% Provision creates a one year proviso and is limited by its own words. The proviso (hereinafter 98% proviso) and its limitation in rate charges end on July 1, 2016.

Accordingly, § 40-8-19(b)(4) is given priority and control over other state statutes and particularly those which establish the rates for nursing facilities’ payments. This section has limited effect, however, by its own terms. It only applies to payment rates from July 1, 2015 to June 30, 2016, and only prohibits the rates from exceeding 98% of the April 1, 2015 rate. Again, the statute is clear on its face in these areas—there is no need to interpret or analyze it further.

The issue presented by the Plaintiffs was whether “the September 26, 2016 Rate Notice, property calculated and implemented such rates in accordance with applicable law.” (Pls.’ Br. at 12.) Section 40-8-19(b)(4) (the 98% proviso) cannot be applied to rates after June 30, 2016. The language of that subsection is plain and clear.

This Court is cognizant that the 98% proviso was enacted at the same time that the legislature modified language concerning the annual adjustments (Sec. 40-8-19(2)(6)). In fact, these statutes were all modified in the same legislative bill, P.L. 2015, ch. 141. It does not matter. The legislature clearly indicated which provision of the statute controls, and when it controls. The legislature is presumed to know the other laws and to know the effect of its own actions. It has long been established “that the General Assembly knows the ‘state of existing relevant law when it enacts or amends a statute.’” *Power Test Realty Co.*, 134 A.3d at 1222 (quoting *Ret. Bd. of Emps.’ Ret. Sys. of R.I. v. DiPrete*, 845 A.2d 270, 287 (R.I. 2004)).

The language of the 98% proviso clearly and unambiguously limits Medicaid payment rates for one year. It has no effect on payments thereafter, that is, after June 30, 2016. If the EOHHS relied on the 98% proviso to determine payment rates thereafter, such reliance is

misplaced. Payments made on and after July 1, 2016 should revert to the payment methodology used previously—without the 98% proviso.

The statute requires adjustment of rates by the change in the national nursing home inflation standard. Section 40-8-19(a)(2)(vi) as amended requires those adjustments to occur on October 1, 2012, October 1, 2014, April 1, 2015, and October 1, 2016 (the latter being subject to a revised formula). The EOHHS issued a letter on August 26, 2015 which attempted to set new rates effective August 1, 2015. While that new rate may be appropriate, it is inappropriate to factor in the 98% proviso to reduce the repayment rate in any way after June 30, 2016.

This Court first looks to the plain language of the 98% Provision to determine whether its language was clear and unambiguous. The language of the 98% Provision provides: “Notwithstanding any law to the contrary, for the twelve (12) month period beginning July 1, 2015, Medicaid payment rates for nursing facilities established pursuant to this section shall not exceed ninety-eight percent (98%) of the rates in effect on April 1, 2015.” Upon examination, this Court finds the plain language of the 98% Provision to be clear and unambiguous.

#### **IV**

#### **Conclusion**

The statute is clear and unambiguous. As such, “this Court has no authority to extend its scope.” *Iselin v. Ret. Bd. of Emps.’ Ret. Sys. of R.I.*, 943 A.2d 1045, 1049 (R.I. 2008) (citing *Citizens for Pres. of Waterman Lake v. Davis*, 420 A.2d 53, 57 (R.I. 1980) (language of a statute cannot be “construed or extended” when the language is unambiguous)). The plain meaning of the words of the 98% Provision clearly and unambiguously provide for a one-year rate reduction. Substantial rights of the Plaintiffs have been prejudiced. For the reasons set forth herein, the Administrative Decision is reversed.

The Decision of the administrative agency is reversed and the matter is remanded to the agency for further proceedings consistent herewith.

Counsel shall submit the appropriate judgment for entry.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** **Alpine Nursing Home, Inc., et al. v. State of Rhode Island Executive Office of Health and Human Services, et al.**

**CASE NO:** **PC-2017-3369**

**COURT:** **Providence County Superior Court**

**DATE DECISION FILED:** **April 9, 2018**

**JUSTICE/MAGISTRATE:** **Lanphear, J.**

**ATTORNEYS:**

**For Plaintiff:** **Bruce Gladstone, Esq.**

**For Defendant:** **Gregory Hazian, Esq.**