



August 1, 2019

Michael Ogborn
Medicaid Chief Financial Officer
Division of Finance and Rate Setting
Office of Health Insurance Programs
New York State Department of Health
One Commerce Plaza Rm. 1430
Albany, NY 12237

Re: Implementation of Change to Medicaid Reimbursement for Nursing Facility Reserved Bed Days for Hospitalizations

Dear Mr Ogborn:

I am writing on behalf of LeadingAge New York to respectfully urge the Department of Health (DOH) to revise the effective date of the change in policy on Medicaid reserved bed day coverage and payments to ensure an orderly and equitable implementation.

LeadingAge NY represents approximately 400 not-for-profit and public providers of long-term and post-acute care and senior services throughout New York State, including nursing homes, home care agencies, adult care and assisted living facilities, managed long term care plans, retirement communities and senior housing facilities.

Earlier this year, DOH proposed revised amendments to Section 505.9(d) of Title 18 NYCRR and Section 86-2.40 of Title 10 NYCRR relative to Medicaid reserved bed payments to nursing homes. Section 2 of Part E of Chapter 57 of the Laws of 2017 amended Public Health Law § 2808(25) to eliminate Medicaid reserved bed payments to nursing homes for Medicaid beneficiaries aged 21+ who are temporarily hospitalized, while maintaining coverage of up to ten days of therapeutic leaves of absence per 12-month period reimbursable at 95 percent of the Medicaid rate.

The Department's May 12, 2017 Dear Administrator Letter (DAL) entitled "2017-'18 Enacted Budget Update-Reserved Bed Days" delayed implementation of the statutory amendments until regulations were adopted and guidance issued. Medicaid beneficiaries nursing homes, managed care plans and hospitals have relied on the May 12, 2017 DAL, and facilities have continued to reserve beds (and receive Medicaid payment) for temporarily hospitalized residents consistent with the guidance and DOH's previous regulations at 18 NYCRR § 505.9(d) and 10 NYCRR § 86-2.40.

Our March 29, 2019 comments on the proposed regulatory amendments stated that, "...there should be definitive guidance issued if, and when, this amendment is adopted to the effect that this policy will be implemented prospectively only." A notice of adoption of the proposed amendments appeared in the *New York State Register* on May 29, 2019. We reached out to DOH at that time, urging issuance of timely guidance to facilities to ensure that they had the information needed to modify their bed hold

policies accordingly and were able to correctly advise their residents of their policies verbally and in writing as required by the relevant federal law [Section 1919(c)(2)(d)(iii) of the Social Security Act] and state regulations at 10 NYCRR § 415.3(h)(3).

Unfortunately, the first communication was issued on July 3, 2019, five weeks after the notice of adoption appeared, indicating that any hospitalization bed hold claims for dates of service after May 29th will be denied for Medicaid beneficiaries aged 21 and over who are not enrolled in hospice. This DAL offered no guidance to nursing homes on modifying or communicating their policies to comply with 10 NYCRR § 415.3(h)(3), or on other aspects of the regulation change. Due to the lack of timely guidance, nursing homes will have extended bed reservations to Medicaid beneficiaries for which they will not be reimbursed and have other questions that are as of yet unanswered.

LeadingAge NY appreciates that DOH is planning to issue a frequently asked questions document on this regulatory change in the near future. However, we are concerned that this new policy is being implemented retroactively without timely guidance, thereby adversely impacting nursing home finances and creating uncertainty for residents, families and providers alike. Accordingly, we respectfully urge DOH to suspend implementation of the new regulations and maintain reimbursement of hospitalization reserved bed days, pending issuance of clear guidance to nursing homes, hospitals and managed care plans, and ideally providing nursing homes with 30 days to revise their policies and advise their residents and families as required.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel J. Heim', with a long horizontal flourish extending to the right.

Daniel J. Heim
Executive Vice President

cc: Mark Kissinger
Ann Foster
Lana Earle
Laura Rosenthal
Sheila McGarvey