



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.  
Commissioner

James W. Clyne, Jr.  
Executive Deputy Commissioner

January 13, 2010

Subject: January 1, 2010 Rates

Dear Administrator:

This letter provides formal notice that the Medicaid rate for your facility effective January 1, 2010 ("January 1, 2010 Medicaid Rate") is now available on the Health Provider Network (HPN). **Please be advised the January 1, 2010 rate is being provided as a "notice" rate and will not be processed for payment (i.e., published) until receipt of all approvals of applicable pending State Plan Amendments from the Centers for Medicare and Medicaid Services (CMS) and approval from the New York State Division of the Budget (NYSDOB).**

The rate is all-inclusive for health care services provided at your facility and continues the 2002 rebasing provisions as provided in the Dear Administrator Letter (DAL) for the April 1/May 1, 2009 rates (please see the DAL regarding the 2002 rebasing rates effective April 1/May 1, 2009 for details). The following information provides a summary of the updates to the rate setting methodology for the January 1, 2010 rates.

***Hepatitis B Vaccine:*** Reimbursement to facilities for their allowable Hepatitis B vaccine expense incurred as a result of complying with Section 5 (a) (1) of the OSHA regulations continues in the January 1, 2010 rate based upon data reported in the 2008 RHCF-2 or RHCF-4, if applicable. The January 1, 2010 adjustment is calculated as follows: the lower of the 2008 vaccine expense reported by the facility or the reported number of inoculations given to employees in 2008 multiplied by the facility's average cost per vial capped at \$128.50 for a three vial series, divided by estimated 2010 patient days and reimbursed as a per diem in the rate.

***Measles and Rubella Immunization Adjustment:*** In accordance with Section 415.26 of Part 415 of the Commissioner's Administrative Rules and Regulations all employees are required to be properly immunized against rubella and all employees born after January 1, 1957 are required to be properly immunized against measles. Reimbursement to facilities for their allowable rubella and measles vaccine expense for the January 1, 2010 rate is based upon data reported in the 2008 RHCF-2 or RHCF-4, if applicable. The 2008 reported expenses are divided by estimated 2010 patient days and reimbursed as a per diem in the rate.

**Criminal Background Checks:** In accordance with Section 402.10 of Part 402 of the Commissioner's Administrative Rules and Regulations facilities are required to review the criminal history record of employees who are hired on or after September 1, 2006 and who provide direct care or supervision to residents. Reimbursement to facilities for costs associated with criminal background checks for the January 1, 2010 rate is based upon data reported in the 2008 RHCF-2 or RHCF-4, if applicable. The 2008 reported expenses are divided by estimated 2010 patient days and are capped at \$110.00 per background check. The reimbursement for this adjustment is included as a per diem in the rate.

**Dementia Grants:** The January 1, 2010 rate for certain facilities includes a dementia grant award to improve the care and treatment of nursing facility residents with dementia. For these facilities, a per diem adjustment has been included in the rate to reimburse this award.

**Trend Factor:** The January 1, 2010 rate is trended from 2002 or applicable base year to the rate year using the Consumer Price Index (CPI) as adjusted by legislative amendments. For purposes of down trending where applicable, the CPI is applied.

	2003 Final CPI	2004 Final CPI	2005 Final CPI	2006 Final CPI	2007 Final CPI	2008 Initial CPI	2009 Initial CPI	2010 Initial CPI
CPI	2.30	2.70	3.40	3.20	2.80	2.30	3.10	1.70
CPI w/Legislative Amendments	2.30	2.70	3.40	2.95	2.10	0	0	0

**Capital Rates - RHCF-4 Filers:** The capital component of the January 1, 2010 rate continues to reflect a capital system (which was implemented with the January 1, 2006 rates) that is designed to automate the annual calculation of the capital component for RHCF-4 filers. The automated capital system uses data reported in the 2008 RHCF-4 cost report, in conjunction with a database developed to include the prior approved mortgages for all facilities and the historical cost/capital model data for proprietary facilities. As a result of this automation effort, incorrect or inconsistent data in the facility cost report submission may have resulted in the disallowance of certain otherwise allowable costs. In particular, depreciation and movable equipment rentals should be reviewed in conjunction with your cost report submission. Facilities should also review their cost report Schedule 17 for possible resubmission to properly report the current allowable mortgage information including principal, term interest rate and amortization schedule.

Effective with the January 1, 2005 rates and continuing for the January 1, 2010 rate, traceback percentages used in the calculation of allowable capital costs on schedule VI of the rate sheet will use the stepdown traceback percentage from the RHCF -4 cost report being used for that rate year.

In accordance with Part 86-2.2(f) of the Commissioner's Administrative Rules and Regulations, lack of respective certifications by both the operator and/or accountant, as required pursuant to Sections 86-2.5 and 86-2.6 of this Subpart, and related company financial statements shall render the financial and statistical report incomplete. For facilities that have not submitted a properly filed cost report, the capital component of their rate is zero. If an acceptable cost report including all certifications and financial statements is received no later than 120 days from the date of this letter, the capital component will be updated utilizing the acceptable 2008 RHCF cost report and will be incorporated when the 2010 rates are published.

Any rate appeal items that alter the 2008 cost data require that the annual reports be re-filed through the HPN no later than 120 days from the date of this letter. The revised reports must have a new Declaration Control Number (DCN) and must be re-certified by both the operator and independent accountant. Revised cost reports will not be used for appeal adjustments unless an appeal is filed. The following items, where applicable, are included in the calculation of the capital component of the rate:

- The rate of return on net investments for 2010 is 0.19% based upon the 26 week U.S. Treasury Bill rate in effect on September 9, 2009 in accordance with Part 86-2.28.
- The rate of return on real property equity, calculated pursuant to Part 86-2.21 is 4.33% for 2010.
- The rate used to calculate the threshold for working capital is 9.25%.

**Capital Rates - RHCF-2 Filers:** For facilities that file the RHCF-2 report, the January 1, 2010 rate reflects reimbursable property costs determined based on the step-down of cost to the nursing home per the 2008 Institutional Cost Report (ICR) filing.

**MDS Data for Case Mix Adjustment to the January 1, 2010 Rate:** The MDS data for the January 1, 2010 rate reflects the MDSs "culled" as a result of the statewide re-upload of the January 28, 2009 Census Roster. The January 28, 2009 census roster re-upload was a ONE TIME RE-UPLOAD to avoid significant declines in rates that would have occurred for facilities that failed to timely file their Federal MDS data as required by CMS. Therefore, the Department again reminds facilities that they MUST file their MDS data in accordance with the timeframes established by CMS. The Department will notify facilities of the CMI adjustment for the July 29, 2009 census roster upload for rates effective July 1, 2009 and subsequently rolled into rates effective January 1, 2010, under separate cover.

Statute requires that effective April 1, 2009 and forward that Case Mix adjustments be made for Medicaid residents only. Therefore the case mix adjustment used to calculate Medicaid rates effective April 1, 2009 and forward (January 1, 2010) is based on the applicable facility census roster (January/July) MDS data for the case mix of a facility's Medicaid residents as reported on Section S of the MDS.

## **AUDITS**

As a reminder, please note that cost reports submitted for the 2002 calendar year or any subsequent year used to determine the operating component of the January 1, 2010 rate will be subject to audit through December 31, 2014. (PHL §2808 2-b(d)).

## **ADULT DAY HEALTH CARE (ADHC) RATES**

Information on the January 1, 2010 ADHC rates will be provided in a separate DAL.

## **APPEALS**

Facilities are reminded that effective April 1, 2009, statute provides the Department will only review operating rate appeals for the correction of computational errors or omissions of data by the Department in determining the operating rate based upon information submitted to the Department prior to the computation of the rate. This applies to all administrative operating appeals submitted to the Department on or after April 1, 2009, regardless of the period they pertain to. Thus, all operating appeals submitted under the timeframes provided in this DAL must be in accordance with these provisions. Operating rate appeals submitted that are not in accordance with these provisions are invalid.

Facilities are also reminded that effective April 1, 2009 the Department will not consider any revisions made to a facility's annual cost report (regardless of the year the cost report applies to) for operating adjustment purposes later than the due date established by the Commissioner. Thus, revisions to the 2002 or subsequent base period cost report, which were due April 15, 2009, will not be accepted by the Department.

**Facilities will have 120 days from the date of this letter to submit appeals to the January 1, 2010 rate. The Department will accept capital component appeals and will only accept operating rate appeals for the correction of computational errors or omissions of data by the Department in determining the operating rate based upon information submitted to the Department prior to the computation of the rate. Please be advised that there will not be an accelerated administrative process ("Rate Hotline") to correct any errors for these rates. In addition the Department will not accept appeals to the MDS data used for either the base year "frozen" case mix or the MDS data "culled" as a result of the January 28, 2009 census roster submitted by the facility for the case mix adjustment currently effective in the January 1, 2010 rate.**

### **APPEAL SUBMISSIONS FOR RHCF-4 FILERS (Freestanding facilities and Hospital-Based facilities filing on the RHCF-4 cost report):**

As indicated in the Department's March 3, 2009 DAL (available on the HPN), appeals submitted on or after April 15, 2009 by mediums other than the new **Electronic Appeals Submission (EAS) System** will not be accepted. The EAS is accessed through the HPN. Detailed

instructions regarding initial access through the HPN were provided in the E-mail transmitting the above noted March 3, 2009 DAL.

The EAS System contains features to provide users with assistance, including links to frequently asked questions (FAQs), a User Guide (Help), and access to regulations related to Medicaid reimbursement for nursing homes (i.e., Title 10 of the New York Code of Rules and Regulations (10 NYCRR)). Most screens provide a small tool bar for the user, allowing creation of a new appeal or quick access to the “appeal search” mechanism.

Questions or issues regarding using the new EAS that cannot be resolved by the FAQs or Help links should be submitted via E-mail to the DOH’s Bureau of Long Term Care Reimbursement at: [nfrates@health.state.ny.us](mailto:nfrates@health.state.ny.us).

*The new EAS System accessed through the HPN is available **only** for Freestanding facilities and Hospital-Based facilities filing on the RHCF-4 cost report.*

**APPEAL SUBMISSIONS FOR RHCF-2 FILERS (Hospital-Based facilities filing on the RHCF-2 cost report):**

**Hospital-Based facilities filing on the RHCF-2 cost report MUST continue to submit appeal requests in hardcopy mailing to the Department.**

The appeal submission for RHCF-2 filers and any related information associated with the appeal **MUST** be forwarded to the following address:

Mr. John Gahan  
Director  
Bureau of Primary and Acute Care Reimbursement  
Corning Tower Building, Room 1043  
Empire State Plaza  
Albany, New York 12237

RHCF-2 filers that file an appeal with the Bureau of Primary and Acute Care Reimbursement must provide the following information:

- ✓ A cover letter, signed by the Operator or Chief Executive Officer, containing a summary of the items of appeal.
- ✓ Supporting schedules or any other pertinent data must be included with the facility’s appeal letter.

***ASSISTANCE AND QUESTIONS REGARDING THE JANUARY 1, 2010 RATE***

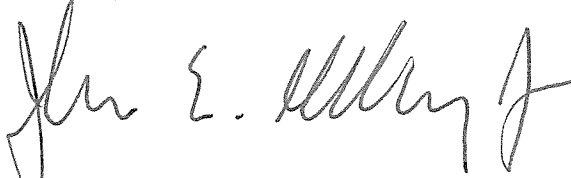
***Email Address***

To provide you assistance in understanding the methodology used to calculate your January 1, 2010 rate, and effectively manage and be responsive to the volume of inquiries the Department has established the following email address which we are requesting you use to submit questions and inquiries regarding the contents of this letter and the computation of your January 1, 2010 rate.

**[nfrates@health.state.ny.us](mailto:nfrates@health.state.ny.us)**

All email correspondence **should include the facility name in the subject line**, along with the operating certificate number, the sender's phone number, and question(s) in the body of the email.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Ulberg, Jr.", written in a cursive style.

John E. Ulberg, Jr.

Director

Division of Health Care Financing