

August 14, 2012

**Subject: Application to Determine Eligibility to Receive Accelerated Capital Reimbursement for the Financing of Federally Mandated Sprinkler Costs**

Dear Administrator:

The purpose of this Dear Administrator Letter (DAL) is to:

- 1) Remind all nursing homes of the Federal mandate which requires that on or before August 13, 2013, all nursing homes be protected throughout by a supervised automatic sprinkler system;
- 2) Provide financially challenged nursing homes that may have difficulty securing the financing required to meet the Federal mandate information on how to submit an application to the Department to determine eligibility to receive accelerated Medicaid capital reimbursement for such sprinkler costs; and
- 3) Provide eligible facilities information on how to apply to have the terms of their sprinkler financings approved and how to apply for a rate adjustment to accelerate capital reimbursement for such approved financings.

**Federal Sprinkler Mandate**

On March 13, 2008, CMS published a final rule requiring all NHs participating in the Medicare or Medicaid programs to be protected throughout by a supervised automatic sprinkler system. Section 42 CFR 483.70(a)(8) requires sprinklers to be installed in accordance with the 1999 edition of NFPA 13, Standard for the Installation of Sprinkler Systems and inspected, tested and maintained in accordance with the 1998 edition of NFPA 25, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems.

**Compliance with this mandate must be achieved no later than August 13, 2013.** Failure to comply with this mandate may result in a civil monetary penalty, denial of Medicare and Medicaid payment for new admissions, and termination of Medicare and Medicaid provider certifications.

**Authorization to Accelerate Capital Reimbursement for Sprinklers for Financially Challenged Nursing Homes**

To assist financially challenged nursing homes with obtaining the financing required to meet the Federal sprinkler mandate and to provide potential lenders with assurance that funds will be available to pay the debt service on such financings, the Department has received regulatory approval (Section 86-2.41 of Subpart 86-2 of 10 NYCRR), under the eligibility criteria and

conditions described below to accelerate Medicaid capital reimbursement to such homes for such sprinkler projects. (Please see attached Regulation)

Ordinarily, capital reimbursement for the allowable costs of equipment acquisition and installation is subject to an initial two year lag (i.e., due to cost reporting and reimbursement timeframes), and is generally provided in the form of depreciation expense over the estimated useful life of the asset plus interest charges on the associated debt (for voluntary/public facilities) or debt service (principal and interest charges) on the associated debt (for proprietary facilities).

Facilities that are financially challenged may have difficulty obtaining external financing for the mandated sprinkler system projects, particularly if the stream of Medicaid reimbursement does not coincide with the repayment term of any associated loan. Under the regulation, the Department is authorized to accelerate Medicaid capital reimbursement for sprinkler installations to eligible facilities by: (1) commencing reimbursement following the Department's approval of the associated terms of debt and debt service schedule; and (2) reimbursing based on the debt service (principal and interest, for all nursing homes) over a shorter period of time corresponding to loan repayment terms available in the marketplace. The accelerated reimbursement only applies to the costs of the sprinkler installation and does not apply to equity related to sprinkler projects (relevant for proprietary facilities) or to other facility capital costs.

Please note that capital reimbursement may not be provided to homes until such time as CMS approves the State Plan Amendment to allow for such reimbursement. That SPA is now before CMS and the Department will notify nursing homes when approval is received. Please note that the Department will accept applications to determine whether a nursing home is eligible (i.e., is financially challenged) to receive accelerated reimbursement for capital while the SPA is pending CMS approval.

### **Determining Eligibility**

The Sprinkler Regulation (Section 86-2.41 of Subpart 86-2 of 10 NYCRR) defines facilities which are eligible to receive accelerated reimbursement for sprinklers as those facilities which the Department determines are financially challenged in terms of their being unable to finance, at terms acceptable to the commissioner, the installation of automatic sprinkler systems, in conformity with the provisions of Federal regulations set forth in 42 CFR 483.70(a)(8).

To determine eligibility, the Department will consider information obtained from a facility's 2011 cost report, and other more recent financial information to be provided by the facility.

**Please note 2011 cost reports are due August 29, 2012.** Such information will include:

- (i) operating profits and losses;
- (ii) eligibility for financially challenged facility funding pursuant to subdivision twenty-one of section 2808 of the Public Health Law;
- (iii) unrestricted fund balances;

- (iv) documentation demonstrating the inability of the facility to obtain credit, at terms acceptable to the commissioner, without the reimbursement treatment accorded pursuant to this section;
- (v) working capital;
- (vi) days of cash expense on hand;
- (vii) days of revenue in accounts receivable;
- (viii) transfers and withdrawals;
- (ix) information related to the health and safety of a facility's residents;
- (x) current year cash flow;
- (xi) outstanding debt to vendors; and
- (xii) the filing of a prior Notice pursuant to Subdivision 1-a of Section 2802 of the Public Health Law, or the receipt of required CON approvals, as appropriate.

### **How to Apply to the Department to Determine Eligibility for the Program**

If you would like to submit an application to the Department to determine if you are financially challenged as defined above and as such would be eligible for the acceleration of capital reimbursement under financing terms acceptable to the Department please complete and submit, via email to [nhsprinklers@health.state.ny.us](mailto:nhsprinklers@health.state.ny.us) the following information to the Department:

- 1) A cover letter addressed to Ms. Tatyana Ochilo indicating:
  - ✓ You are requesting that the Department determine if your facility is financially challenged and eligible for the acceleration of capital reimbursement to finance the costs of meeting the Federal mandate for sprinklers;
  - ✓ The name and operating certificate number of your nursing home; and
  - ✓ A primary contact at your facility (including telephone number and email)
- 2) The Attached Form "Application to Determine Eligibility to Receive Accelerated Capital Reimbursement for the Financing of Federally Mandated Sprinkler Costs"

Please note the Form referred to above also includes a request for important preliminary information about your sprinkler project that, if your facility is eligible for the Program, will help the Department expedite your application for a rate adjustment and assist you in indentifying a lender for your financing.

To expedite the review of all applications, please note that the Department will not review applications that do not use the forms provided herein. The Department will notify facilities, within 30 days of the receipt of the information submitted above, whether they are eligible to apply for accelerated capital reimbursement for sprinklers.

### **Terms and Conditions for Receiving Accelerated Capital Reimbursement for Sprinklers**

Facilities that are determined by the Department to be eligible to receive accelerated capital reimbursement for sprinklers may apply to the Department to have their current capital rates adjusted to reflect the costs of the annual debt service related to the financing of equipment and

other capital improvements required to meet the Federal mandate for automated sprinklers. Please note that in order to receive such rate adjustment, the Department must approve the terms and conditions of the financing, which must be reasonable. Eligibility does not guarantee approval of the terms and conditions of proposed financings.

As a condition for receiving such a rate adjustment, facilities must submit to the Department:

- 1) the costs of the project (i.e., proposal from contractor);
- 2) the proposed terms of the financing, including interest rate and term of the financing, and other such information as may be required by the Commissioner;
- 3) prior to the due date of the first debt service payment related to such financing, a schedule setting forth by month the estimated debt service payable over the life of the financing. Such schedule, project and financing terms, along with such other information as may be required by the commissioner, shall be provided to the commissioner for review and approval at least sixty days prior to the due date of such first debt service payment; and
- 4) **Medicaid revenues attributable to the rate adjustments authorized by this subdivision and any other additional facility revenues needed to cover scheduled debt service payments relating to the financing of an automatic sprinkler system that is in compliance with Federal regulation, must be deposited into a separate account maintained by the facility and the deposits in such account shall be used solely for the purpose of satisfying such debt service payments.**

### **How Eligible Facilities May Apply to the Department for Accelerated Capital Reimbursement for Sprinklers**

Please note that in addition to determining whether your facility is eligible, the Department must also approve the terms and conditions of your financing in order to approve a rate adjustment to accelerate capital reimbursement for your project.

Facilities that have received notification from the Department that they are eligible for accelerated capital reimbursement for sprinklers may apply to the Department for a rate adjustment by completing the attached Form “Application for Approval of Terms of Sprinkler Financing and Rate Adjustments to Accelerate the Reimbursement of Capital for Federally Mandated Sprinkler Costs”.

As indicated above, please note the that capital reimbursement may not be provided to eligible homes until such time as CMS approves the State Plan Amendment to allow for such reimbursement.

### **Information on Securing a Lender to Finance Sprinkler Projects**

As your facility works to secure a lender for the costs of your facility’s sprinkler projects, please note the following:

- You may find it helpful to provide a copy of this DAL and the attached regulation regarding accelerated capital reimbursement for sprinklers to prospective lenders.
- HUD's Fire Safety Equipment Loan Program (FSELP)
- Please note that secondary debt obligations used to finance sprinkler projects may impact the terms of any primary debt obligations of your facility (e.g., liens, loan insurance, pledged revenue accounts, escrow funds). As such you may be required to seek approval from your primary lender (i.e., HUD or other lender) to enter into such secondary debt obligations.

### **Facilities Not Eligible for Acceleration of Capital Reimbursement for Sprinklers**

Please note that only facilities for which the Department has determined are eligible and have received approval of the financing terms of their sprinkler loans will receive rate adjustments to accelerate capital reimbursement.

The costs related to sprinkler financing for facilities that are not eligible for rate adjustments to accelerate the reimbursement of capital will be reimbursed under the traditional reimbursement methodology for capital (two year lag, with allowable costs reported in the appropriate cost report).

If you have any questions, please contact Tatyana Ochilo at [nhsprinklers@health.state.ny.us](mailto:nhsprinklers@health.state.ny.us) or (518) 473-4421.

Sincerely,



*for* Lana I. Earle  
Deputy Director  
Division of Finance and Rate Setting  
Office of Health Insurance Programs