



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

September 8, 2010

Re: Draft Preliminary Update of Initial April 1, 2009, May 1, 2009 and January 1, 2010 Rates

Dear Administrator:

Throughout the 2010-11 Budget discussions with the Legislature and the Nursing Home industry, the Department of Health expressed significant concerns about the impact of the 2002 rebasing and other statutorily authorized rate changes. Specifically, the Executive branch expressed concerns that these rates (which are draft and have not yet been approved by the Federal Centers for Medicare and Medicaid Services (CMS)), would result in wide variation in regional and facility specific impacts that will present fiscal challenges to many homes. During these discussions, the Executive branch advanced alternatives that would have provided a smooth transition to a more rational, transparent pricing system and mitigated these adverse impacts. Unfortunately, the Executive branch's efforts were not successful. However, current law provides that a new pricing system will take effect on July 1, 2011, and the Department will continue to actively seek input from providers and stakeholders to refine the elements of this new system.

Given the significant impact of these rates, the Department is providing you with an informal update of the initial April 1, 2009, May 1, 2009 and January 1, 2010 rates ("the Draft Preliminary Update of the Initial Rates") that were provided to you via the January 13, 2010 Dear Administrator Letter (DAL). Please note that these rates have not been approved by the Division of the Budget or the Federal Centers for Medicare and Medicaid Services (CMS), and hence are being transmitted to you for your preliminary planning purposes. The Department is continuing to work with CMS as expeditiously as possible to secure approval of all the State Plan Amendments (SPAs), including the necessary Upper Payment Limit calculations, which are required before the Department can formally publish such rates for payment.

Draft Preliminary Update of the Initial Rates

Attached please find a list of the Draft Preliminary Update of the Initial Rates for each nursing home. The attached rates are all inclusive rates, and include the respective capital rate for the applicable rate year, and all the other elements described in the January 13, 2010 DAL. The rates reflect updates the Department made to the rates which include the correction of errors made in the methodology as a result of programming errors and other errors relayed to the Department by individual facilities that were deemed to be significant by the Department. Please be advised the rates contained herein:

- Do not include the impact of case mix adjustments for July 1, 2009 or January 1, 2010 that will impact both facility specific rates and all nursing home rates as a result of the \$210 million cap
- Do not include adjustments that will be made to such rates as the result of the processing of appeals that have or will occur subsequent to the production of the initial rates or any other adjustments the Department deems appropriate that may have an impact on both facility specific rates and all nursing home rates as a result of the \$210 million cap
- Do not include the impact of the 2009 banking adjustment
- Do not include 2009 Financially Disadvantaged payments (this SPA is currently under review by CMS).

Appeals to the Draft Preliminary Update of the Initial Rates Provided Herein

The Draft Preliminary Update of the Initial Rates is being provided to you by the Department for your information and administrative convenience and thus **are not subject to appeal**. **The Department will NOT accept any appeals with respect to the rates transmitted via this DAL.**

Appeals Filed In Relation to the Initial Rates Transmitted Via the January 13, 2010 DAL

As a result of questions raised in connection with ongoing litigation, the Department's Division of Health Care Financing, in conjunction with the Department's Division of Legal Affairs, has undertaken a review of the existing practice of allowing facilities to file administrative rate appeals with regard to rates which have not been approved by DOB and CMS and published as final rates in accordance with the provisions of Public Health Law §2807. As a result of that review, it has been determined that such administrative rate appeals may be accepted only with regard to final, published rates. Accordingly, rate appeals that have been filed and that were due May 13, 2010 will not be processed and will be deleted from the Department's electronic rate appeals system.

Appeals to the Published April 1, 2009, May 1, 2009 and January 1, 2010 Rates

Upon the receipt of the required DOB and CMS approvals of the April 1, 2009, May 1, 2009 and January 1, 2010 rates, the Department will formally publish such rates. The DAL that will accompany such rates will provide 120 days from the date of such DAL to file 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.

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 was due April 15, 2009, will not be accepted by the Department.

Upon Publishing the April 1, 2009, May 1, 2009 and January 1, 2010 Rate

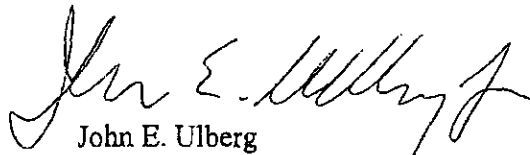
Subsequent to the publishing of the April 1, 2009, May 1, 2009 and January 1, 2010 rates, the Department will hold a Webinar Session similar to the session held on January 19, 2010. The Webinar will provide a forum for facilities to participate in an educational seminar concerning the new rate methodology via the internet. Other topics of discussion will include the implementation of other rate setting provisions, including:

- the removal of prescription drugs from the nursing homes rates and the shift of the payment for such costs to fee-for-service as required by recently enacted legislation
- the \$80 million cap on the processing of nursing home rate appeals for the period April 1, 2010 through March 31, 2011 and the requirements regarding the prioritizing of appeals to be processed during this period
- information regarding the process for negotiating the settlement of outstanding nursing home appeals
- information regarding the implementation of the assessment amnesty program
- updates to the implementation of changes to the reimbursement for bed hold days
- information and reminders regarding the implementation of the 2009 Financially Disadvantaged Program as described in the October 2, 2009 DAL.

Details regarding when the Webinar will be held will be transmitted to facilities via the HPN.

Please note that as discussed above, the attached Draft Preliminary Update of the Initial Rates is being provided for informational purposes only. To assist the Department in effectively responding to questions regarding these rates, please submit your questions via e-mail to NFRATES@health.state.ny.us. The Department plans to compile these questions and will address them during the Webinar which will be held when the rates (and detailed rate sheets) are approved and subsequently published by the Department.

Sincerely,



John E. Ulberg
Director, Division of Health Care Financing
Office of Health Insurance Programs

Attachment

cc: Donna Frescatore
Mark Kissinger
Thomas Conway