



150 State Street, Suite 301 Albany, New York 12207-1698 Telephone (518) 449-2707 Fax (518) 455-8908 Web [www.nyahsa.org](http://www.nyahsa.org)

## MEMORANDUM

**TO:** RHCF Members

**FROM:** Dan Heim, Vice President for Public Policy

**DATE:** June 5, 2008

**SUBJECT:** **Equity Withdrawals and Transfers of Assets**

**ROUTE TO:** Director of Finance

---

ABSTRACT: DOH asked to clarify requirement on RHCF equity withdrawals and asset transfers.

As NYAHSA previously reported to you, the final legislation for the 2008-09 state budget included a new requirement for nursing homes to notify the Department of Health (DOH) prior to withdrawing equity or transferring assets above a certain threshold. The actual enacted language [Public Health Law Section 2808(5)(b)] is as follows:

“(5) (b) On and after April first, two thousand eight, no residential health care facility may withdraw equity or transfer assets which in the aggregate exceed three percent of such facility's total Medicaid revenue in any calendar year, without prior written notification to the commissioner. Notification shall be made in a form acceptable to the department by certified or registered mail.”

DOH has indicated its intent to issue written guidance to nursing homes in the near future relative to this new prior notification requirement. In an effort to gain more clarity on how the requirement will be implemented, NYAHSA and the NYS Health Facilities Association have written a letter to DOH. A copy is attached below for your reference. NYAHSA will notify members when we have received a response from DOH.

Please note that this new law carries with it a legislative effective date of April 1, 2008. Accordingly, while we await the official DOH guidance, NYAHSA encourages its members to review and comply with this requirement to the best of their ability, based on a plain reading of the law and on the advice of their legal counsel.

If you have any questions, please contact me at [dheim@nyahsa.org](mailto:dheim@nyahsa.org) or 518-449-2707 ext. 128.

Attachment



---

June 2, 2008

Mr. Mark Kissinger  
Deputy Commissioner  
Office of Long Term Care  
New York State Department of Health  
14<sup>th</sup> Floor, Corning Tower  
Albany, NY 12237

**RE: RHCF Withdrawal of Equity/Transfer of Assets Provisions**

Dear Mark:

As you are aware, the recently enacted 2008-09 state budget amended subdivision 5 of section 2808 of the Public Health Law, relative to requiring prior written notification to the Department of Health (DOH) of withdrawal of equity or transfer of assets by a residential health care facility (RHCF). On behalf of our respective memberships, the New York Association of Homes and Services for the Aging (NYAHS) and the New York State Health Facilities Association (NYSHFA) seek further clarity on this new requirement.

Under the statute, prior notification needs to be provided for equity withdrawals and asset transfers "...which in the aggregate exceed three percent of such facility's total Medicaid revenue in any calendar year."

We understand that DOH intends to issue guidance to RHCFs in the near future on this provision of law. In an effort to assist the Department in this endeavor, we are pleased to share the following questions that our members have posed:

1. To which bureau/individual within DOH should these notifications be sent?
2. Must the facility be able to document that the notification was sent, or that DOH actually received the notification, prior to making the withdrawal or transfer?
3. Since the effective date of this provision is April 1, 2008, will the Medicaid revenue basis for 2008 be the entire calendar year's revenues, or the revenues for the remaining nine months of 2008?
4. Since withdrawals and transfers occur during the course of a calendar year without certain knowledge of what the Medicaid revenues will be for that year, how should a facility estimate its Medicaid revenues for the calendar year at issue?
5. Will such an estimate ultimately be compared to actual revenue data in the Medicaid cost report for that respective calendar year? Obviously, there can be substantial differences

between estimated/budgeted Medicaid revenue and actual Medicaid revenue. If so, which class code and line number entries in the Medicaid cost report would be used to determine a facility's actual Medicaid revenue for this purpose? Furthermore, how would any discrepancies between estimated and actual Medicaid revenues be handled?

6. If a withdrawal of equity or transfer of assets is made after a calendar year has ended but before the facility closes out its year-end financial statements, which calendar year's Medicaid revenue should be used to determine whether a notification is needed?
7. The statute refers to withdrawals of equity or transfers of assets "which in the *aggregate* exceed three percent." Does use of the term "aggregate" trigger the prior notification requirement at the point when multiple withdrawals/transfers of less than three percent total more than three percent? If so, once a facility has reached the three percent aggregate amount in any given calendar year, must the facility provide prior notification for every subsequent withdrawal/ transfer made, regardless of the amount? If so, this could become very burdensome for the facility and DOH.
8. If a facility makes pre-scheduled recurring transfers or withdrawals for a particular purpose, can the facility provide one prior notification for this purpose, rather than a notification for every such transaction?
9. Should equity withdrawals or transfers for payment of facility-related taxes, capital improvements, and/or related financing requirements be exempt from the Medicaid revenue requirement?

We would appreciate clarification of the above issues in the DOH-issued guidance and/or in a response to this letter, as we attempt to work with the Department to fully communicate the equity withdrawal and transfer prior notification requirements to our respective memberships.

Sincerely,



Robert J. Murphy, CAE  
Executive Vice President Governmental  
Affairs  
NYSHFA



Daniel J. Heim  
Vice President for Public Policy  
NYAHS