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MEMORANDUM

TO: RHCF Members

FROM: Dan Heim, Vice President for Public Policy

DATE: June 27, 2003

SUBJECT: **Mortgage Refinancing Program**

ROUTE TO: Administrator, CFO

DOC. ID # 32206305

ABSTRACT: Details on nursing home mortgage refinancing program included in state budget.

Introduction

As indicated in previous NYAHSA communications, the final budget for the state fiscal year (SFY) 2003-04 includes a program designed to encourage nursing homes to refinance existing mortgages in cases when doing so would be cost effective and otherwise feasible.

The purpose of this memo is to explain the legislation in greater detail, and update members on how it will be implemented and on NYAHSA's plans to offer educational assistance.

Mortgage Refinancing Program Details

The actual nursing home mortgage refinancing program language is shown in Attachment A below. Under the program, the Department of Health (DOH) will develop and implement a standardized process for nursing homes to follow, to determine if their mortgages can be re-financed and result in a savings. Facilities would be required to review their existing mortgages, and to submit the results of their review along with any needed information on

these mortgages to DOH within a prescribed time period.[1]

We understand that DOH will be sending a letter to nursing homes as early as next week explaining this process, which will include an attachment that gives guidelines on how to determine whether an existing mortgage is a candidate for refinancing. Facilities will apparently be given until September 1, 2003 to submit their information.

DOH would then review each facility's submission and make a written determination within sixty days (i.e., on or about November 1, 2003) as to whether the facility should re-finance its existing mortgage(s) and for what amount(s). These determinations will be based on the following factors and criteria:

1. ***The re-financing has to result in a "material" savings on a present value basis.*** In other words, the present value of the debt service under the new mortgage would have to be less than the present value of the existing debt service by some "material" amount, as defined by DOH. All closing costs--including prepayment penalties--would be factored into this determination. DOH will also define the discount factors that must be used in the present value analysis.
2. ***The repayment term on the mortgage can exceed the remaining term on the current debt, if a savings would still result.*** We understand that facilities will be able to opt for a repayment term up to the remaining repayment term on the current mortgage or the remaining depreciable life of the building, whichever is longer;
3. ***Variable rate mortgage loans can be used, provided the required savings is shown.*** Medicaid would reimburse interest on such mortgages based on future changes in the interest rate, provided the average rate over the mortgage term doesn't exceed the rate on the loan that was refinanced;
4. ***Not-for-profit and public RHCFs can use taxable rather than tax-exempt loans, as long as a taxable loan would show material savings.***DOH has already allowed such loans in the past in some cases;
5. ***Any facility debt service reserve fund balances would need to be used to reduce the amount borrowed, to the extent they are not needed to establish the new mortgage.*** Debt service reserve funds are required in some current mortgages, and this would require that such funds be taken into consideration when determining the amount of the new loan allowed for reimbursement purposes;
6. ***Other types of facility reserve funds do not need to be used to reduce the amount of the new mortgage loans.*** Examples include funded depreciation accounts, other restricted contributions for building or other uses, and unrestricted fund balances; and
7. ***The new mortgage principal amount will be the basis for future Medicaid reimbursement.*** This would represent the amount allowed by DOH for the borrowing. Over-mortgaging and "cash outs" will likely not be allowed under DOH's guidelines.

During the period October 1, 2003 through March 31, 2004, each nursing home's Medicaid capital cost reimbursement will be revised to reflect an appropriate prevailing interest rate for the remaining mortgage term (as of July 1, 2003), plus 200 basis points, unless:

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[1] Article 28-A and 28-B facilities would submit their information to the Dormitory Authorityor HFA/SONYMA, as instructed by those agencies.

[2] This first reference to proprietary nursing homes was a drafting error; the intent is to use a taxable fixed rate.Â However, with such a minimal spread between prevailing tax-exempt and taxable financing rates, the same rates may be used for all sponsor groups for this purpose.

1. the facility has initiated or closed on a refinancing, in which case capital reimbursement will be based on the new mortgage(s). For this purpose, a facility that has applied through the CON process to refinance its existing mortgage debt as part of a project involving facility replacement, expansion, renovation or change of ownership is considered to have initiated a refinancing; or
2. the facility is unable to re-finance its current mortgage(s) to show the required savings, in which case reimbursement would continue to be based on the existing mortgage(s), plus any costs associated with the facility's attempt to re-finance.

Facilities will apparently have until December 1, 2003 (or 30 days after DOH's written determination, whichever is later) to indicate to the Department that one of these exceptions applies. In effect, only those facilities that could derive a material savings from refinancing under DOH's test and choose to not take action will be subject to the reduction in capital cost reimbursement.

NYAHSA Member Education

NYAHSA will be providing members with educational programming on this subject over the next several weeks. We are planning regional seminars on refinancing and available capital financing options, and will feature a session on refinancing at NYAHSA's Financial Managers Annual Conference, being held from August 26-28 at the Renaissance Westchester in White Plains.

NYAHSA has been in communication with DOH on this refinancing program, and will continue to keep members updated on new developments. Please contact Patrick Cucinelli at (518) 449-2707, ext. 145 or pcucinelli@nyahsa.org; or me at ext. 128 or dheim@nyahsa.org if you have any questions on this memo.

Attachment A

Mortgage Refinancing Language Included in Final State Budget

"Subdivision 20 of Section 2808 of the public health law is amended to read as follows:

20. a. The commissioner shall timely develop and implement a standardized process for assessing the feasibility of capital mortgage re-financings, including a standard formula for determining the net cost benefit of re-financing, inclusive of all transaction and closing costs. On or before July first, two thousand three or ninety days after the effective date of this subdivision, whichever is later, each residential health care facility established under this article and certified as a provider pursuant to title XIX of the federal social security act (Medicaid), except for those facilities established under the nursing home companies law or the hospital loan construction law, shall review its existing capital debt structure using the standard formula to evaluate whether or not a material cost benefit could be derived by re-financing its capital mortgage or mortgages, and shall forward the results of such review to the commissioner. The commissioner may request and such facilities shall submit descriptions of existing mortgage arrangements and debt service reserve funds as needed to implement paragraph b of this subdivision. Facilities established under the nursing home companies law or the hospital loan construction law shall submit to the dormitory authority, the housing finance agency and/or the state of new york mortgage agency such information as is required by such agency to evaluate potential re-financing of such capital mortgages.

b. The commissioner shall review each facility's submission and make a written determination as to whether or not the facility should re-finance its capital mortgage or mortgages, and if so, for what amount, within sixty days of the date of the facility's submission based on the following parameters:

(i) the mortgage re-financing must result in a present value cost benefit that "materially exceeds", as such term is defined by the commissioner, the amount of all transaction and closing costs associated with the re-financing, including any pre-payment penalties associated with the current mortgage or mortgages. The commissioner shall do such calculations in a manner consistent with comparable calculations in the state finance law;

(ii) mortgages may be re-financed for a term greater than the remaining term of the existing debt within certain limits, if doing so would result in the present value cost benefit specified in subparagraph (i) of this paragraph;

(iii) mortgages may be re-financed utilizing variable rate mortgage loans, if doing so would result in the present value cost benefit specified in subparagraph (i) of this paragraph. In such cases, for purposes of determining the reimbursable capital interest expense included in the capital cost component of rates of payment determined pursuant to this article, the average interest rate over the life of the re-financed mortgage shall not exceed the interest rate in effect on the previous mortgage debt immediately prior to the re-financing;

(iv) not-for-profit and governmental residential health care facilities may utilize taxable mortgage loans to re-finance their existing debts, if doing so would result in the present value cost benefit specified in subparagraph (i) of this paragraph;

(v) moneys contained in facility debt service reserve funds may be considered in the evaluation of amounts necessary to be re-financed, but only to the extent such moneys total more than the debt service reserves needed to establish the successor capital mortgage financing;

(vi) in no event shall funded depreciation accounts, or building funds accumulated through donor-restricted contributions or unrestricted contributions, gifts, bequests, or legacies, be considered in the evaluation of amounts necessary to be re-financed; and

(vii) notwithstanding any inconsistent provision of law or regulation to the contrary, the principal amount, including all transaction and closing costs and any pre-payment penalties associated with the previous mortgage or mortgages, that is thereby deemed necessary to be re-financed by the commissioner, as approved by the public authorities control board and the united states department of housing and urban development where appropriate, shall be considered the final, approved mortgage amount for capital cost reimbursement under the relevant provisions of this article.

c. Notwithstanding any inconsistent provision of law or regulation to the contrary, the capital cost component of rates of payment for services provided for the period beginning October first, two thousand three or one hundred eighty days after the effective date of this subdivision, whichever is later, through March thirty-first, two thousand four for residential health care facilities established under this article and certified as providers pursuant to title XIX of the federal social security act (Medicaid), except for those facilities established under the nursing home companies law or the hospital loan construction law, that have been identified by the commissioner as refinancing candidates pursuant to paragraph b of this subdivision shall reflect capital interest costs equivalent to the lower of the prevailing market borrowing rates available on or about July first, two thousand three or ninety days after the effective date of this subdivision, whichever is later, for refinancing capital mortgages for their remaining term plus two hundred basis points, or the existing rate being paid by the facility on its capital mortgage or mortgages as of that date. The commissioner shall determine, in consultation with mortgage financing experts, the prevailing market borrowing rates available to not-for-profit and governmental residential health care facilities to re-finance capital mortgages on a tax-exempt fixed rate basis, and to proprietary residential health care facilities to re-finance capital mortgages on a tax-exempt fixed rate basis[2], and to proprietary residential health care facilities to re-finance capital mortgages on a taxable fixed rate basis, for this purpose. Exceptions to this policy

shall be provided by the commissioner to each such facility that demonstrates, prior to October first, two thousand three or thirty days after receipt of the commissioner's written determination specified in paragraph (b) of this subdivision, whichever occurs later, that:

(i) it has initiated or completed the process of re-financing the mortgage or mortgages in question, in which case the capital cost component of rates of payment shall be timely revised to reflect capital interest costs associated with a re-financed mortgage that conforms to the standards in paragraph (b) of this subdivision. For this purpose, a facility that has applied for approval by the commissioner, the state hospital review and planning council and/or the public health council to re-finance its existing mortgage debt as part of a larger project involving facility replacement, expansion, renovation or change of ownership is considered to have initiated the process of re-financing; or

(ii) it can not re-finance its capital mortgage or mortgages to achieve the relevant present value cost benefit specified in subparagraphs (i) and (ii) of paragraph (b) of this subdivision due to a "lockout" or similar provision in its current mortgage agreement that prevents re-financing; due to some other type of genuine re-financing obstacle, such as an inability of the facility to obtain credit approval from a lender or mortgage insurer, or due to an intervening change in credit market conditions or other relevant circumstances, in which case the capital cost component of rates of payment shall continue to reflect capital interest costs associated with the existing mortgage or mortgages, together with reasonable costs incurred in connection with the facility's attempt to re-finance its existing mortgage debt."

[1] Article 28-A and 28-B facilities would submit their information to the Dormitory Authorityor HFA/SONYMA, as instructed by those agencies.

[2] This first reference to proprietary nursing homes was a drafting error; the intent is to use a taxable fixed rate. However, with such a minimal spread between prevailing tax-exempt and taxable financing rates, the same rates may be used for all sponsor groups for this purpose.