



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

## MEMORANDUM

**TO:** RHCF Members

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

**DATE:** May 5, 2008

**SUBJECT:** Update on New Medicaid Reimbursement System

**ROUTE TO:** Directors of Finance and Nursing

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ABSTRACT: Update on the new Medicaid nursing home reimbursement system.

### Introduction

The Nursing Home Reimbursement Workgroup met this past Tuesday, April 29<sup>th</sup> to discuss several issues related to the new nursing home reimbursement system. Department of Health (DOH) management staff provided updates on various elements of the new system.

The workgroup was created in the legislation that authorized the reforms to the nursing home Medicaid reimbursement methodology, and is charged with examining: (1) capital reimbursement for older facilities; (2) temporary/agency staffing costs; (3) insurance cost reimbursement; (4) conversion from RUG-II to RUG-III; (5) specialty care rates; (6) direct and indirect corridors; (7) reasons for high Medicaid utilization; (8) Medicare maximization; (9) effects of nursing home and hospital rightsizing; and (10) impact of Medicaid-only CMI. Dan Heim and Laurie Jankowski (Niagara Lutheran Home & Rehabilitation Center, Buffalo) are NYAHS's two representatives on the workgroup.

### Status of Medicaid State Plan Amendment

DOH provided an update on its recent efforts to secure state plan amendment (SPA) approval for the Medicaid nursing home reimbursement reforms from the federal Centers for Medicare and Medicaid Services (CMS). As we have previously reported to members, the main issue holding up the process has been the state's ability to demonstrate compliance with the Medicare upper payment limit (UPL). For this purpose, DOH must assure CMS that the transition payments for 2007 and 2008 under the new Medicaid system, when added to the current rate payments, do not exceed what would be paid under Medicare reimbursement principles.

NYAHSA and its Joint Association Task Force partners (HANYs and NYSHFA) developed an alternative methodology for calculating the UPL, which we believe demonstrates sufficient “room” to accommodate the transition payments. We provided DOH with a full analysis, description, briefing and examples of this UPL calculation.

DOH publicly confirmed in the workgroup meeting what NYAHSA had previously reported to its members; namely, that the state submitted a written response to a series of questions from CMS during the first week of April. At that time, DOH also provided CMS with a couple of examples of how the new UPL calculation would work, and had subsequent discussions with them. DOH indicated that CMS fully understands the new UPL approach, and that they plan to submit a formal written response to CMS on the UPL within a week’s time.

CMS will have up to 90 days to review DOH’s response. NYAHSA is hopeful that this will be the final step in securing federal approval, which would pave the way for overdue transition payments to facilities totaling \$137.5 million for 2007 and \$167.5 million for 2008. Assuming CMS takes the full 90 days to review these submissions and has no further questions, it is possible that facilities could actually receive transition payments by late summer/early fall.

### **RUG-II to RUG-III Conversion**

DOH is continuing to make preparations for implementation of the new reimbursement system on January 1, 2009. The 2009 Medicaid rates are to reflect the new methodology, which features the RUG-III patient classification system, an updating of the cost base to 2002 and several other features previously described to you. This will entail converting from the current case-mix calculation—which is based on the Patient Review Instrument (PRI) and the RUG-II system—to a modified version of the Minimum Data Set (MDS)-based RUG-III system that Medicare uses.

Current law further requires that beginning April 1, 2009, RUG-III case-mix will be calculated based only on each facility’s Medicaid patients, rather than all patients in the facility. NYAHSA continues to aggressively advocate for legislation to have this “Medicaid-only case-mix index” provision delayed.

In an effort to convert to RUG-III, DOH received CMS approval in January 2008 to add three new items to section S of the MDS. The changes collect information identifying: (1) residents eligible for specialty units/facility Medicaid rate reimbursement; (2) residents eligible for enhanced Medicaid rate reimbursement add-ons for specific conditions; and (3) the primary payor (for Medicaid-only case-mix index purposes). DOH issued a Dear Administrator Letter (DAL 08-04) on April 4<sup>th</sup> outlining these changes, and indicating that all facilities must submit the revised Section S beginning on or after October 1, 2008. If they have not already done so, member facilities are advised to inform their software vendors of the need to reprogram Section S. The DAL on the Section S changes, along with instructions, specifications and codes are available in the nursing home section of the Health Provider Network (HPN) at: <https://commerce.health.state.ny.us/hpn/>.

DOH is currently in the process of seeking CMS approval to use the HPN to exchange information with facilities on the MDS data needed to set rates under the new system. Under the state law that governs the new reimbursement system, RUG-III case-mix adjustments will be made in January and July of each year. DOH is proposing to require facilities to send a listing of all residents that were in their facilities (along with their identifying information) on designated

dates in January and July. DOH would then use these listings to extract MDS data from the federal/state MDS database for these residents, and send each facility a roster identifying the specific MDSs that will be used for rate-setting purposes. These rosters will be provided so that facilities will know which medical records should be retained to support the selected MDSs, until such time as DOH has notified them that the MDSs are not subject to audit. These information exchanges would apparently occur through the HPN, provided CMS approves DOH's proposal.

The new system will be based on 2002 reported costs. In order to establish case-mix neutral statewide prices for the new system, DOH has extracted 2002 statewide MDS data and assigned the residents from that time period to RUG-III categories. These category counts will be used to calculate a statewide RUG-III case-mix index, which in turn will be used to case-mix neutralize the statewide average direct prices. Since the Section S additions discussed above were not in place in 2002, DOH is currently analyzing the 2002 MDS data to separately identify specialty unit/facility residents and residents eligible for enhanced Medicaid reimbursement add-ons for special conditions (e.g., extended TBI add-on, etc.). DOH is also undertaking the same process for the 125+ facilities that have re-based their Medicaid rates since 2002 to be able to match their base year cost data to the MDS data for the same year.

DOH also plans to issue a request for proposals (RFP) later this month to entities that may be interested in developing protocols and procedures for auditing the MDS assessment data. According to the Department, the RFP will be fairly open-ended and invite respondents to suggest various approaches for conducting MDS audits. DOH has apparently looked at some other states' approaches for auditing the MDS, but is not settled on a particular approach at this time.

## **Conclusion**

During its April 29<sup>th</sup> meeting, NYAHSAs and other workgroup members also briefly discussed some of the items it is charged with addressing including capital reimbursement for older facilities; gathering data on temporary/agency staffing costs; reasons for high Medicaid utilization in New York; Medicare maximization efforts; and the potential impact of Medicaid-only CMI. NYAHSAs plans to continue eliciting member feedback on these areas to further inform these discussions.

We will continue to keep members posted on further developments in these areas. In the meantime, please contact me at (518) 449-2707, ext. 128 or [dheim@nyahsa.org](mailto:dheim@nyahsa.org) if you have any questions or comments.