NYAHSA | New York Association of Homes & Services for the Aging

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MEMORANDUM

TO: RHCF Members

FROM: Dan Heim, Vice President for Public Policy

DATE: April 15, 2009

SUBJECT: **State Budget and Related Updates**

ROUTE TO: Department Heads

ABSTRACT: Further state budget and Medicaid reimbursement updates.

Introduction

This memo provides updates on various provisions of the recently enacted 2009-10 state budget and related areas.

- ***Bed hold payments:*** The budget reflects a fiscal savings from reducing the allowable vacancy standard from 5 percent to 3 percent, and reducing the per diem bed hold payment from each facility's full Medicaid rate to 75 percent of the Medicaid rate. The Department of Health (DOH) has advised NYAHSA that they are working on emergency regulations to implement these changes, and that any such regulations will be implemented prospectively.

- ***Trend factor revisions:*** According to DOH, facilities will receive a 2008 "banking" adjustment for the first quarter of 2008 (i.e., 1/1-3/31/08) in the 2009 roll factor, paid out over the first quarter of 2009 (i.e., 1/1-3/31/09). This partial banking adjustment will reflect the positive difference between the initial (i.e., 2.3%) and final (i.e., 3.4%) trend factors for 2008. The deficit reduction plan enacted in February 2009 eliminated the 2008 banking adjustment entirely for the final three quarters of 2008 (i.e., 4/1-12/31/08).

  The roll factor in the rates effective 1/1-3/31/09 will therefore include a 3-month banking adjustment as described above, the 2008 final trend factor reduced by 35 percent and further reduced by 1.3 percentage points, and the 2009 initial trend factor, reduced by 1.0 percentage points. The roll factor for 4/1-12/31/09 will not include a 2008 banking adjustment and will reflect zero trend factors for both 2008 and 2009.

- ***Recruitment and retention (R&R) adjustments:*** The final budget reduced funding for R&R adjustments for state fiscal year (SFY) 2008-09 (i.e., 4/1/08-3/31/09) for both non-public and public facilities, and ended these adjustments on April 1, 2009. We are still seeking clarification on the total amounts that will be paid to facilities for this period. NYAHSA has just confirmed with DOH that official federal approval has been received for R&R payments to non-public facilities for SFY 2008-09, and that the associated rate adjustments should be made in the near future. Public facility payments are not subject to federal approval, since they are made with state-only funds.

- ***Financially disadvantaged funding:*** Although the program criteria are changing for 2009, this will not affect the distribution of these funds for 2008. DOH is currently working on the 2008 calculations, and we expect the associated payments to be made in the near future.

- ***Depreciation funding:*** Voluntary nursing homes were not required to deposit their Medicaid depreciation reimbursement into a segregated account in either 2007 or 2008. NYAHSA has made the case with DOH that this waiver still exists in current law through March 31, 2010, and that facilities should not have to resume depreciation funding for 2009. DOH's counsel is reviewing this issue, and we hope to have clarification very soon.

- ***Asset transfers by voluntary facilities:*** The 2009-10 budget legislation includes a new requirement that DOH prior approval is needed if a voluntary not-for-profit facility seeks to transfer funds from its nursing home balance sheet to another entity, and the transfers individually or in the aggregate would exceed three percent of the prior calendar year's Medicaid revenue. Facilities are required to make these requests to DOH in writing, and to send them by certified or registered mail. In reviewing these requests, DOH will be considering the facility's overall financial condition, any indications of financial distress, whether the facility is delinquent in any payment owed to DOH and whether the facility has been cited for immediate jeopardy or substandard quality of care. DOH will have up to 60 days to act on these requests. If a transfer is made without prior approval, DOH could require replacement of the withdrawn assets and also impose a penalty of up to 10 percent of any amount transferred without prior approval.

  DOH has advised NYAHSA that they are working on a Dear Administrator Letter (DAL) and accompanying guidance on this requirement, and plan to issue it soon. However, the legislation makes the new requirement effective April 1, 2009. Current law requires facilities to provide *prior notification* to DOH of such transfers. Until the DAL is issued, NYAHSA recommends that facilities that could be affected by this requirement contact either DOH's Office of Long Term Care or the Bureau of Long Term Care Reimbursement for more specific guidance on actions they should take in this regard.

Conclusion

We are continuing to seek further clarifications on state budget issues, and will keep you updated. If you have any questions in the meantime, please contact me at dheim@nyahsa.org or 518-449-2707 ext. 128.