JULY 13, 2017 CAPITAL WEBINAR FAQ'S

Real Property Questions

Q: How will an existing certified proprietary RHCF facility be reimbursed for costs of leasehold improvements that have received CON approval and been paid for/financed by the landlord which has passed on those costs to the RHCF by an amendment to the existing lease that has been previously recognized by the DOH for reimbursement purposes? Will such reimbursement be for the interest and depreciation of the approved new assets or will the costs of the new lease be recognized in the capital component of the Medicaid rate?
A: In general, leasehold improvements would be recognized, either for depreciation or equity payments, depending on the sponsorship of the facility. Financing is held to normal approval standards, but the continued existence of the financing would need to be confirmed each year as it is not held by the facility. New leases are not recognized for Medicaid reimbursement purposes.

Q: We will be doing construction on an egress pathway as a result of the NYSDOH survey deficiency. Is this an allowable depreciable item?
A: It would be allowed if it falls within the parameters of depreciation/amortization expense in accordance with GAAP and the requirements of the Center for Health Facility Planning, Licensure and Finance.

Q: We are planning on expanding our visitor parking lot. Is this an allowable depreciable item?
A: If it falls within the parameters of depreciation/amortization expense in accordance with GAAP and the requirements of the Center for Health Facility Planning, Licensure and Finance.

Q: How will an existing certified proprietary RHCF facility, whose useful life has expired, be reimbursed for the costs of leasehold improvements that it has received CON approval for? Will it be an add-on, based on the depreciation and interest of the approved costs of the new asset, to the existing capital component of the Medicaid rate?
A: Proprietary facilities whose useful life has expired, will not receive further payments above their residual payments for any new projects, unless the CON is such that it extends the useful life of the entire facility. The Department is reviewing the regulations and policies of this issue.

Q: It was represented that upon transfer of real property allowable costs are the lower of purchase price or MATP. This policy is in apparent conflict with Part 86-2.21 (f) (3). Please explain?
A: The statement was based upon the Medicare Provider Reimbursement Manual (PRM) 104.10 (C). However, PRM 104.10 (E) provides that "the asset moves from the hands of the seller to the hands of the buyer at the assets' net book value…" Therefore, the Department wishes to retract that statement.

Real Property Leases Questions

Q: Offsite Adult Day Health Care rentals were allowed for reimbursement provided that the operator completed Schedule 18 of the cost report indicating that the lease rental was with an unrelated entity and provided a statement related to its inability to produce historical costs information. Beginning in 2016 DOH abandoned this reimbursement. Please explain?
A: Reimbursement for real property leases entered into after March 10, 1975 are not reimbursable in accordance with Part 86-2.21 (f)(3). To provide for any leases entered into after that date would go against regulation.

Q: Offsite rentals for administrative support space have been allowed upon audit by the OMIG. Please explain the basis for the apparent contradiction that these rentals are not allowable unless supported by a CON application particularly since CON approval may not be required for the relocation of administrative service or alternate use of the space formerly occupied by the administrative function?
A: Reimbursement for real property leases entered into after March 10, 1975 are not reimbursable in accordance with Part 86-2.21 (f)(3). To provide for any leases entered into after that date would go against regulation.

Home Office Reimbursement Questions

Q: Why are home office real property expenses not allowed?
A: Facilities that wish to receive reimbursement for real property, for services that have been moved off-site, need to get approval from the Center for Health Care Facility Planning, Licensure and Finance, which would include approval for project costs.

Q: What is the basis for DOH statement that home office building and fixed equipment capital costs are not allowable for Medicaid reimbursement considering that both Part86 (86-2.26) and Federal Regulations CMS 15 (2150) allow these costs if related to patient care?
A: Facilities that wish to receive reimbursement for real property, for services that have been moved off-site, need to get approval from the Center for Health Care Facility Planning, Licensure and Finance, which would include approval for project costs.

Q: Please explain the apparent contradiction of allowing home office/related party moveable equipment capital costs and not allowing building related costs?
A: Moveable equipment costs would occur regardless of where the operations occur.

Capitalized Leases Questions

Q: Is a capitalized lease for something like a HVAC system reported as real property, cost center 001 allowable?
A: Capitalized leases for real property are not reimbursed for the lease payment. They are reimbursed either depreciation or return of equity, depending on the sponsorship of the facility.

Q: In schedule 9A column 0275 “capitalized lease cost”, do we report the capitalized lease cost only the amount capitalized during the report period or the capitalized cost accumulated over the periods?
A: Report the total cost of the lease for all periods.

Q: Do we have a special rule for how to depreciate the recognized capitalized lease cost? Such as useful life?
A: Although there are no special rules regarding capitalized lease depreciation, please refer to Part 86-2.19(a) for guidance.

Q: Beyond schedule 9A, are there other schedules required to be reported?
A: This question is too broad to interpret.

Q: If we report correctly, will the facility be reimbursed for the depreciation and interest portion of the capital lease project with two year lags (2018 RHCF will be reimbursed in the 2020 capital rate)?
A: Interest is paid on a current year basis. Depreciation is paid on a two-year lag.

Interest Reimbursement Questions

Q: Please provide the DOH definition of “interest only” debt?
A: No principal payments are being made.

Q: Part 86.2.20 and Part 86-2.21 provide the basis for allowable interest. How does DOH justify the position that interim periods of interest only payments, on a loan that requires principal repayment, are not allowable for Medicaid reimbursement?
A: The Medicare Provider Reimbursement Manual 202.1 states that allowable interest must be “supported by evidence of an agreement that funds were borrowed and that the payment of interest and repayment of the funds are required.”

Q: Clearly define what DOH considers to be a “Bridge Loan”?
A: Bridge loans are temporary in nature.

Q: Considering the parameters of Part 86-2.21 (e) (3) on what basis does DOH determine when “Bridge Loans” are eligible for Medicaid reimbursement?
A: All loans are reviewed in the same manner regardless of the nature.

Q: Please define short term with respect to working capital loans.
A: Please refer to PRM 202.1. Less than a year is considered short term.

Q: Was the statement about only reimbursing working capital when a site has a loss based on a regulation?
A: Please refer to New York State Public Health Law 2808.22(a)

Q: Are unrealized gains on investments included in investment income offset?
A: Unrealized gains or losses on investments are not considered for Medicaid reimbursement purposes.

Refinancing/Shared Savings Program Questions

Q: Someone had mentioned that the DOH needs to approve all refi's. Does this include a refinance that is not extending the amortization, but simply mirroring the current structure, but at a lower interest rate? If so, how long does the approval process take, and who would we send the approval request to?
A: All refinancings must be approved in order to be reimbursed. Currently, the Department has no outstanding approval requests. Requests can be sent via email to nfrates@health.ny.gov

Q: How will the 50% interest savings be paid to facilities that refinanced their mortgages, lump sum or part of Medicaid rate?
A: All refinancing shared savings reimbursement will be made through the capital portion of the rate and attested to.

Q: Will 50% savings also be paid on a rate year basis?
A: Savings will be paid on a current year basis, meaning that the savings expected to be achieved in calendar 2018 will be reimbursed in the 2018 rate.

Q: Do mortgage/loan modifications qualify for the Refinancing/Shared Savings Program, provided such modifications otherwise meet the program criteria?
A: Yes, regardless of the type of term changes, approved refinancings or modifications will be considered for the program.

Q: Do you consider changes in SWAP agreements a modification and does it have to be pre-approved?
A: Swap agreements that are not currently reimbursed, will not need modifications of those swap agreements pre-approved.

Q: Do we include the refinance savings with this year's cost report? You mentioned an appeal for the retro, but how are the ongoing savings going to be recognized?
A: The shared savings will be attested to for 2018 and forward on a current year basis, therefore it is not necessary to report it on the cost report.

Moveable Equipment Reimbursement Questions

Q: Would movable equipment depreciation for televisions purchased for every patient bed in the facility be included in allowable depreciation?
A: In accordance with Medicare Provider Reimbursement Manual (PRM) 2106.1, "The full costs of items or services such as telephone, television, and radio which are located in patient accommodations and which are furnished solely for the personal comfort of the patients … are not includable in allowable costs…"

Q: Vending machines are used by residents? So, then what?
A: Vending machines are not reimbursable.

Cost Reporting Questions

Q: Is schedule 17 required to be completed in order for the real property mortgage interest to be allowable?
A: Schedule 17 must be completed in order for mortgage and lease interest to be reimbursed.

Q: How is DOH using Schedule Q?
A: Currently it is being used as a reference for the attestations.

Q: Will Schedule Q be used for automated capital process?
A: It is hoped that in the future it can be automated.

Q: Should the trace back % be used before posting expenses?
A: No.

Q: Will the instructions for Schedule Q be revised to ask the facility to report the costs before traceback? This has been the recommendation given by rate setting but the instructions conflict with this.
A: Yes.

Q: If we have a balloon payment on our mortgage in 2018, how do we show interest expense reimbursement on Schedule Q to get reimbursed in 2018 rate when we don't know what interest and principle will be?
A: The balloon payment would be refinanced. Only the amount of interest on the approved current mortgage should be reported. When the refinancing of the balloon payment is approved, an appeal will be processed to add the new approved interest. Until such time that the refinancing is approved, no interest is reimbursable.

Equity Withdrawal Questions

Q: Section 400.19 provides that "payment to an operator or owner of a salary in excess of the maximum amount allowed for reimbursement purposes by the Department of Health" is considered an equity withdrawal. Considering this, please provide an annual schedule of allowable operator or owner salaries allowed for reimbursement.
A: A standardized schedule cannot be provided as each facility will differ.

Q: Is the schedule of salaries applicable to not for profit or public facilities? If so, what persons are subject to the salary ceilings?
A: Salary ceilings are applicable to all nursing facilities. Included in the salary ceiling computations are the positions required to be reported on Schedule 14 of the cost report.

Q: The comments regarding equity withdrawal related to income taxes are contrary to the Brightonian v. Daines court decision? Clarification is needed.
A: In Brightonian Nursing Home v. Daines, the New York Court of Appeals stated in a footnote that the 3% equity withdrawal reporting requirements do not apply to "[w]ithdrawals for facility purposes, including the payment of salaries and taxes…." Brightonian Nursing Home v. Daines, 21 N.Y.3d 570, 577 n.3. However, the court differentiates between "facility purposes" and "non-facility purposes," the latter of which are defined in 10 NYCRR 400.19 (a)(3) and which include both "(i) any transfer of a facility's cash or other assets directly or indirectly to or for the benefit of its operator," as well as "(v) payment to the operator or owner of a salary in excess of the maximum amount allowed for reimbursement purposes by the Department of Health." Thus, the court did not intend for the payment of the operator's income tax to be included as a "withdrawal for facility purposes."
The Department intends to continue requiring facilities to receive prior approval to withdraw equity for those express purposes and all others.

Q: Are withdrawals considered approved if DOH does not reply to a request within the 60-day timeframe?
A: DOH must issue a determination to approve or disapprove the withdrawal of equity or assets within 60 days of receiving a written request from the facility. If DOH does not reply to a request within this timeframe it is considered approved. This situation is unlikely to occur as DOH responds to most requests expeditiously.

Q: It was indicated that income taxes are subject to the 3% limitation. Generally, income taxes are an expense of a corporate entity. Are these income taxes subject to the 3% limitation even though they are expenses and not withdrawals?
A: If an equity withdrawal is necessary in order to pay the income taxes, regardless of what entity the expense belongs to, permission is required. The situation expressed above, does not appear to necessitate an equity withdrawal.

Q: Form of ownership may require that the principals are responsible personally for income taxes related to the income of facility operations. Are these income taxes subject to the 3% limitation? If so, how does an operator satisfy the DOH relative to the amount identified as personal income tax associated with facility operations?
A: If an equity withdrawal is necessary in order to pay the income taxes, regardless of what entity the expense belongs to, permission is required. Although the purpose of the withdrawal can be noted, permission is still required.

Q: If corporate income taxes are not subject to the 3% limitation and personal income taxes are subject to the 3% limitation, please clarify the apparent contradictory requirements of prior approval.
A: Corporate income taxes are paid by the facility directly and are considered an expense of the facility and do not require a withdrawal of equity. Personal income taxes must be paid by the individual who is responsible for them, typically by withdrawing equity from the facility.

Miscellaneous Questions

Q: For related company capital (Part III) is everything allowable except for building rent?
A: This question is too broad to interpret.

Q: Does everyone have to file an attestation even if they agree with the rate sent?
A: Everyone is encouraged to file an attestation.

Q: This facility does not file a RHCF-4; we do file an ICR, and an RHCF-2; does the attestation process apply?
A: Yes.

Q: When is the accounting manual going to be updated? It is over 30 years old.
A: There are currently no plans to do so.

Q: If a RE Tax refund applies to multiple years how should the offset be reported?
A: The tax refund should be reported as one sum. The applicable year's offset should be attested to and explained in the narrative.

Q: Please publish a comprehensive listing of DOH policies that are not clearly spelled out in regulation.
A: This is too broad of a request to fulfill.

Questions that were submitted, but do not relate to the capital webinar, are not addressed.