



## Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

August 31, 2017

Dear Administrator:

This letter is to advise you that the form developed in accordance with Chapter 58 of the Laws of 2009 amended section 2808(5) of the Public Health Law (PHL) to enhance the requirements related to equity withdrawals or asset transfers made by non-public residential health care facilities, has been revised. The updated form can be accessed through the Health Commerce System (HCS) at NH Cost Report/ Letters/ Equity Withdrawal – Asset Transfer Form.

The statute (attached) was amended in 2010 to include a three percent threshold of total reported annual revenue rather than total Medicaid revenue. The provisions of this law require facilities that wish to withdraw equity or transfer assets that exceed the threshold, receive prior Departmental approval. Failure to properly comply with the equity withdrawal and asset transfer provisions provided in the PHL may result in a penalty or the required replacement of amounts withdrawn or transferred.

Subsequent withdrawals or transfers made in the same calendar year should be added to any prior withdrawals or transfers made in such calendar year for the purposes of determining if such withdrawals or transfers exceed three percent of prior year total patient revenue. It should be noted that salaries paid to owners of proprietary facilities and distributions or consulting fees paid to other companies affiliated with owners is also considered to be an equity withdrawal and should be included in the total request.

The PHL requires the Department to approve or disapprove a facility's withdrawal or transfer request within sixty (60) days of the date the request is received. To evaluate a facility's withdrawal or transfer request, the Department will consider the facility's overall financial condition, including outstanding liabilities owed to creditors and the State, indicators of financial stress, and quality of care. Facilities may provide other information it believes will assist the Department in evaluating its request.

Facilities that plan to withdraw equity or transfer assets are required to submit a cover letter to the Department, indicating that you are requesting prior approval to do so and to complete and sign the attached Equity Withdrawal/Transfer of Asset Request Form. The cover letter and the Form must be sent to the Department via email to: [nfrates@health.ny.gov](mailto:nfrates@health.ny.gov) In the subject line, please state "Equity Withdrawal Request".

Sincerely,

Ann Foster, Deputy Director  
Division of Finance and Rate Setting  
Office of Health Insurance Programs  
New York State Department of Health

5. (a) Any operator withdrawing equity or assets from a hospital operated for profit so as to create or increase a negative net worth or when the hospital is in a negative net worth position, calculated without regard to any surplus created by revaluation of assets, must obtain the prior approval of the commissioner in accordance with regulations promulgated by the commissioner with the approval of the state hospital review and planning council. The commissioner shall make a determination to approve or disapprove a request for withdrawal of equity or assets under this subdivision within sixty days of the date of the receipt of such a request. Requests shall be made in a form acceptable to the department by certified or registered mail. In addition to any other remedy or penalty available under this chapter, and after opportunity for a hearing, the commissioner may require replacement of the withdrawn equity or assets and may impose a penalty for violation of the provisions of this subdivision, relating to withdrawing equity or assets, or the regulations promulgated thereunder, in an amount not to exceed ten percent of any amount withdrawn without prior approval. No facility shall enter into a real property mortgage or lease transaction without thirty days prior notice in writing to the commissioner.

(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.

(c) Notwithstanding any inconsistent provision of this subdivision, on and after April first, two thousand nine, no non-public residential health care facility, whether operated as for-profit facility or as a not-for-profit facility, may withdraw equity or transfer assets which in the aggregate exceed three percent of such facility's total Medicaid revenue in the prior calendar year, without the prior written approval of the commissioner. The commissioner shall make a determination to approve or disapprove a request for withdrawal of equity or assets under this subdivision within sixty days of the date of the receipt of a written request from the facility. Requests shall be made in a form acceptable to the department by certified or registered mail. In reviewing such requests the commissioner shall consider the facility's overall financial condition, any indications of financial distress, whether the facility is delinquent in any payment owed to the department, whether the facility has been cited for immediate jeopardy or substandard quality of care, and such other factors as the commissioner deems appropriate. In addition to any other remedy or penalty available under this chapter, and after opportunity for a hearing, the commissioner may require replacement of the withdrawn equity or assets and may impose a penalty for violation of the provisions of this subdivision in an amount not to exceed ten percent of any amount withdrawn without prior approval.



# NYS Department of Health

Bureau of Managed Long Term Care

Department of Health

1 Commerce Plaza – 99 Washington Ave. Room 1430

Albany, New York 12210

## Equity Withdrawal / Transfer of Asset Request Form (Page 1 of 2)

Please print clearly. This Form, including the attestation, must be completed in its entirety for the appropriate transaction and submitted to the NYS Department of Health sixty (60) days prior to the anticipated withdrawal.

Facility Name: \_\_\_\_\_ Operating Certificate #: \_\_\_\_\_

Type of Request/Notification (Check one): ☐ Equity Withdrawal ☐ Asset Transfer

Contact Information:

Name \_\_\_\_\_ Phone # \_\_\_\_\_

Email Address \_\_\_\_\_

### Equity Withdrawal Request

Section 2808(5) of the Public Health Law (PHL) requires facilities that withdraw equity that exceeds three percent of a facility's Total Reported Annual Revenue from the facility's most recently available reported data to obtain written approval from the Department of Health prior to making such withdrawals. **Total Reported Annual Revenue is defined as the amount of revenue reported on Schedule 7 Column 0161, Line 020 from the most recently reported data from the RHCF-4.** Please note that for purposes of Section 2808(5) of the PHL equity withdrawals include withdrawals made for the purpose of paying Federal and/or State taxes.

Amount of Withdrawal Request: \$ \_\_\_\_\_ Anticipated Date of Withdrawal: \_\_\_\_\_

Amount of Equity Distributions paid to owners for salaries in the calendar year \$ \_\_\_\_\_

Amount of Equity Distributions paid to other companies or consulting fees affiliated with owners  
\$ \_\_\_\_\_ Identify companies/owners \_\_\_\_\_

Amount of any outstanding loan balances of owners, owed to the facility \$ \_\_\_\_\_

Total Amount of all previous withdrawals made in the calendar year (excluding the amount indicated in the Amount of Withdrawal Request above) \$ \_\_\_\_\_

## Equity Withdrawal / Transfer of Asset Request Form (Page 2 of 2)

### Transfer of Assets Request

Section 2808(5) of the Public Health Law (PHL) require facilities that transfer assets that exceed three percent of a facility's Total Reported Annual Revenue from the facility's most recently available reported data to obtain written approval from the Department of Health prior to transferring such assets. **Total Reported Annual Revenue is defined as the amount of revenue reported on Schedule 7 Column 0161, Line 020 from the most recently reported data from the RHCF-4.**

For purposes of Section 2808(5) of the PHL, asset transfers do not include transfers made to make capital improvements or to the related financing of such capital improvements. For purposes of Section 2808(5) of the PHL, asset transfers include transfers made to satisfy donor restrictions.

Value of Asset Transfer Request: \$ \_\_\_\_\_ Anticipated Date of Transfer: \_\_\_\_\_

Total Value of all previous asset transfers made in the calendar year (excluding the amount indicated in the Amount of Transfer Request above) \$ \_\_\_\_\_

### Additional Required Information For All Requests

1. Provide a copy of the facility's latest quarterly financial reports or unaudited financial statements with this Form. Please minimally include a monthly cash flow statement and a balance sheet for the current period.
2. Please provide any additional information or comments that you believe will assist the Department in evaluating your request. If additional information is provided please include a description of that information below and submit it with this Form.

I hereby attest that the information furnished above is correct and accurate to the best of my knowledge.

Operator / Officer Signature\*: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

\*The signatory requirements for this Form are the same as those required for the RHCF Cost Report, and thus this Form should be signed by the operator of a proprietary medical facility or an officer of a voluntary medical facility. Please provide only one signature.

Completed forms and other information should be sent to the following email address:  
[nfrates@health.ny.gov](mailto:nfrates@health.ny.gov)

Please include "Equity Withdrawal Request" in the subject line.

Revised (8/17)