



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Executive Deputy Commissioner

May 13, 2009

Dear Administrator:

This letter is to advise you that 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. The new provisions require facilities that withdraw equity or transfer assets that exceed three percent of a facility's Medicaid revenue in the prior calendar year to obtain written approval from the Commissioner of the Department of Health prior to making such withdrawals or transfers. The new statute took effect on April 1, 2009 and is attached for your reference.

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 withdraw equity or transfer assets 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 by certified or registered mail to:

Director
Bureau of Long Term Care Reimbursement
New York State Department of Health
Corning Tower Bldg. – Room 943
Empire State Plaza
Albany, New York 12237

For purposes of determining if your withdrawals or transfers exceed three percent of Medicaid revenue please use Medicaid revenue as reported on Schedule 7, Line 001, Column 0161 of the RHCF-4 cost report. Please be advised that 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and asset transfer provisions provided in the PHL may result in a penalty or the required replacement of amounts withdrawn or transferred.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 Medicaid revenue. The amount of prior withdrawals and transfers should be reported, as well as the current withdrawal or transfer that when combined with those prior withdrawals or transfers exceed three percent of prior year total Medicaid revenue.

The PHL requires the Department to approve or disapprove a facility's withdrawal or transfer request within 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 (e.g., changes in the facility's balance sheet over time, if it has received Financially Disadvantaged payments), and the quality of care (e.g., whether the facility been cited for substandard quality of care). As indicated on the attached Form, facilities may provide other information it believes will assist the Department in evaluating its request.

If you have any questions or require additional information, please contact Jacquelyn Valente at (518) 473-4421 or send an email to NFRATES@health.state.ny.us.

Sincerely,

A handwritten signature in dark ink, appearing to read "John E. Ulberg Jr.", with a stylized flourish at the end.

John E. Ulberg Jr.

Director

Division of Health Care Financing

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.

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

Please print clearly or complete form electronically. This Form, including the attestation, must be completed in its entirety for the appropriate transaction and submitted to the NYS Department of Health, Attn: Bureau Director by certified or registered mail.

Facility Name: _____ Operating Certificate #: _____

Type of Request/Notification (*Check one*): ☐ Equity Withdrawal ☐ Asset Transfer (Please proceed to Asset Transfer section of this Form)

Equity Withdrawal

Section 2808(5) of the Public Health Law (PHL) requires facilities that withdraw equity that exceeds three percent of a facility's Medicaid revenue in the prior calendar year to obtain written approval from the Department of Health prior to making such withdrawals. Medicaid revenue is defined as the amount of revenue reported on Schedule 7 Line 001, Column 0161 of the RHCF-4 cost report. 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: _____

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

Prior calendar year Total Medicaid Revenue \$ _____

1. Has the prior calendar year Total Medicaid Revenue been estimated?

☐ Yes, this request is being made prior to the due date established by Commissioner for the prior year's RHCF Cost Report

☐ No, this request is being made after the due date established by the Commissioner for the prior year's RHCF Cost report

2. Will all or any part of the withdrawal be utilized in the furtherance of nursing home operations (e.g., to pay Federal and/or State taxes)?

☐ No ☐ Yes If yes, provide description:

3. Provide a copy of the facility's latest quarterly financial reports or unaudited financial statements with this Form. Please include a monthly cash flow statement for the current year.

4. Please provide any additional information or comments regarding your request to withdraw equity 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.

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

Transfer of Assets

Section 2808(5) of the Public Health Law (PHL) require facilities that transfer assets that exceed three percent of a facility's Medicaid revenue in the prior calendar year to obtain written approval from the Department of Health prior to transferring such assets. Medicaid revenue is defined as the amount of revenue reported on Schedule 7 Line 001, Column 0161 of the RHCF-4 cost report.

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) \$ _____

Prior calendar year Total Medicaid Revenue \$ _____

1. Has the prior calendar year Total Medicaid Revenue been estimated?

☐ Yes, this request is being made prior to the due date established by Commissioner for the prior year's RHCF Cost Report

☐ No, this request is being made after the due date established by the Commissioner for the prior year's RHCF Cost report

2. Will all or any part of the asset transfer be utilized in the furtherance of nursing home operations?

☐ No ☐ Yes If yes, provide description:

3. Provide a copy of the facility's latest quarterly financial reports or unaudited financial statements with this Form. Please include a monthly cash flow statement for the current year.

4. Please provide any additional information or comments regarding your request to transfer assets 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:** _____

*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 should be sent, by certified or registered mail, to:
Director
Bureau of Long Term Care Reimbursement
New York State Department of Health
Corning Tower Bldg. – Room 943
Empire State Plaza
Albany, New York 12237