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

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, Senior Vice President for Policy and Program Development
Darius Kirstein, Senior Policy Analyst

DATE: February 26, 2010

SUBJECT: **Rebased Medicaid Rates**

ROUTE TO: Administrator, CFO

ABSTRACT: NYAHSA continues its advocacy on Medicaid rate issues

Introduction

NYAHSA is continuing its analysis and advocacy to make sure that several issues with the recently-issued 2009 and 2010 Medicaid rates are addressed. We are working directly with member facilities, the governor's office, the Department of Health (DOH) and other associations on these issues. This memo updates members on our recent activities.

In meetings yesterday with both the governor's office and DOH, we raised serious concerns about providers whose rebasing benefit is calculated as being lower than the budget cuts reflected in these rates (i.e., the Medicaid-only case-mix and the "scale-back" adjustments). NYAHSA stressed the difficulty that these facilities will experience in dealing with retroactive rate cuts. Both the governor's office and DOH acknowledge the concerns, but indicate that a legislative correction may be needed to address this issue. NYAHSA is working – along with other groups – to identify various approaches to dealing with this problem.

We also raised concerns about any increases in case-mix index (CMI) beginning July 1, 2009 being subject to the $210 million cap. Under existing law, all facilities' rates will be recalculated based on CMI changes, but the scale-back adjustment would be re-run to bring the total expenditure increase back to the $210 million. NYAHSA is arguing that this will fail to recognize systemic CMI increases, and make the rate system more unstable. This would require a legislative amendment for which we will be advocating.

Another legislative amendment we are discussing involves the requirement in the original rebasing statute for facilities to spend at least 65 percent of any rate increases from rebasing on labor. With later changes to the law authorizing Medicaid-only CMI and the scale-back adjustment, facilities may wind up with much smaller increases or even rate cuts. NYAHSA will be urging lawmakers to revise the law to ensure that the 65 percent requirement is applied to any net increase from all three adjustments – rebasing, Medicaid-only CMI and scale-back.

NYAHSA Meets with DOH

DOH is working to correct several errors in the 2009 and 2010 rates. In a meeting late yesterday with NYAHSA and other associations, DOH staff identified the corrections underway, responded to our questions and promised to share additional data. The corrections underway should not further delay payment of the rates, estimated by DOH to come in the second quarter of 2010 (see NYAHSA Doc. ID# n00004322). The federal government is currently reviewing the state's Medicaid Plan submissions on rebasing, and DOH believes approval will be secured very soon.

DOH is hoping to move quickly to make the major corrections to the rates. In addition, the governor has proposed a dollar limitation on rate appeals processing beginning April 1, 2010. For these reasons, it is crucial that if you have identified any facility-specific errors that would have a large impact on your rate, you should contact your rate setter as soon as possible to make sure DOH is aware of the error(s).

System-wide Corrections

As indicated in NYAHSA Doc. ID# n00004322, NYAHSA and its Joint Association Task Force colleagues identified a number of systemic issues with the rates. DOH told us yesterday that they are moving forward with the following system-wide corrections:

- **Recalculation of the direct IPAF (i.e., WEF adjustment) for all facilities.** This issue was noticed in the NYC WEF but was an error that affected all WEF regions. DOH inadvertently excluded some costs when calculating the percentage of direct expenses attributable to salaries, wages and benefits. This correction will not impact any facility whose direct costs are below the ceiling or above the base (i.e., in the "corridor"). However, this correction may also impact the "scale-back" calculations.
- **Recruitment and retention (R&R) funding.** The rate calculation subtracted the R&R funding from allowable costs. DOH agrees with our argument that since R&R is no longer being paid, the adjustment is not appropriate, and will no longer exclude R&R from individual facility allowable costs or when peer group means are calculated.
- **1/1/10 rate sheet miscellaneous adjustments.** As previously noted, reimbursement amounts for criminal history background checks, Measles, Rubella and Dementia Grants were left off of the 1/1/10 rate sheets. DOH will make a statewide correction to address this.
- **Manually calculated rates.** A number of more recently sold/rebased homes received manually generated rate sheets that contained several errors. DOH is reviewing and correcting all of the manual rate sheets and believes that they have been in contact with all homes affected. Affected homes that have NOT been in contact with DOH staff should call their rate setter.

Further Clarifications and Data

In response to our questions, DOH staff clarified the methodology used to trim "outlier" data from statewide mean price and WEF adjustment calculations. As explained in the 4/1/09 rate DAL, the Department limited the number of facilities included in the peer group mean calculation by removing facilities with per-day costs at or above the 97th percentile and at or below the 3rd percentile. They also excluded any facility whose per-hour wage was at or above the 95th percentile or below the 5th percentile of their WEF region average.

This outlier test was done separately on direct and indirect costs. If a home was deemed an outlier using ANY of the outlier tests (direct costs, indirect costs or WEF wages), the entire facility (including any specialty units) was excluded from all calculations of the WEF and the statewide mean prices. DOH has promised to share data that will help us to verify that these exclusions are not skewing the calculation of the means. We specifically discussed this concern with DOH in the context of the ventilator specialty rates and certain WEF regions.

Staff also clarified that for 300+ peer group assignment, the intent was to include specialty beds in the bed count, and that they are using the same standard in defining homes with fewer than 80 beds. Members who observe a discrepancy in their rate sheets should contact their rate setter.

Cash Flow and Timing

NYAHSA continues to stress the cash flow difficulties members are facing. In our meeting, we urged DOH to have a plan not only to pay rate increases promptly, but to address the cash flow implications of these rates for facilities that would be negatively impacted. We are pleased to report that DOH is working on the financially disadvantaged facility calculations and hopes to reconcile 2008 cash receipts assessment payments and update assessment reimbursement add-on amounts shortly. DOH also agreed on the need for a plan to help facilities with cash flow. We suggested that this could involve spreading out recoupments and moving multiple rate schedules together as needed.

Conclusion

We will keep you updated on our efforts, and ask that you continue to let us know of concerns or any new errors you may find in your rates. Please contact Darius Kirstein at dkirstein@nyahsa.org or 518-449-2707, ext. 104; Patrick Cucinelli at pcucinelli@nyahsa.org or ext. 145; or Dan Heim at dheim@nyahsa.org or ext. 128.