NEW YORK STATE OF OPPORTUNITY. Department of Health

ANDREW M. CUOMO
Governor

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

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

January 31, 2017

Subject: January 1, 2017 RHCF and ADHC Initial Rates

Dear Administrator:

This letter is to provide you with information regarding your Residential Health Care Facility (RHCF) and Adult Day Health Care (ADHC) Medicaid reimbursement rates effective January 1, 2017. These rates are published on Health Commerce System (HCS) and include the following operating and capital components:

- Operating Component: Reflects the operating portion of your facility's January 1, 2017 rate and includes the following components *(see Attachment A & B)*
    - Minimum wage adjustment *(see Attachment C*) to reimburse increases beginning January 1, 2017 as established by the Minimum Wage Act (Article 19 of the New York State Labor Law) and;
    - Case Mix adjustment reflecting the Minimum Data Set census data from the July 2016 census collection
- Capital Component: Reflects a 2017 capital rate that is based upon your facility's 2015 certified cost report, and may reflect acceptable attestations received during the preview period as well as those received after the notice rates were issued in early November *(see Attachment D).*

Additionally, we would like to remind you that the Public Health Law requires providers to seek prior approval from the Department for all withdrawals of equity assets *(see Attachment G*).

The Department's regulations allow rate appeals to be filed within 120 days from the date of this letter *(see Attachment E)*. If you have any questions regarding initial 2017 rates, please send an email to **NFRATES@health.ny.gov**.

Sincerely,

Steven M. Simmons
Director
Bureau of Residential Health Care Reimbursement
Division of Finance and Rate Setting
Office of Health Insurance Programs

ATTACHMENT A
2017 NURSING HOME PRICES

	Direct Component of the Price Medicare Ineligible Price, Medicare Part D Eligible Price (HBF +300 Bed Peer Group)				
Effective Date of Prices	**Direct Price**	**50% of Direct Price**	**Direct HBF +300 Bed**	**50% of Direct HBF +300 Bed Price**	**Total Direct Component of Price for HBF +300 Bed Peer Group**
1/1/2017	**$119.02**	**$59.51**	**$132.17**	**$66.09**	**$125.59**

	Direct Component of the Price Medicare Part B Eligible Price, Medicare Part B and Part D Eligible Price (HBF +300 Bed Peer Group)				
Effective Date of Prices	**Direct Price**	**50% of Direct Price**	**Direct HBF +300 Bed Price**	**50% of Direct HBF +300 Bed Price**	**Total Direct Component of Price for HBF +300 Bed Peer Group**
1/1/2017	**$117.36**	**$58.70**	**$130.43**	**$65.22**	**$123.91**

	Direct Component of the Price Medicare Ineligible Price, Medicare Part D Eligible Price (-300 Bed Peer Group)				
Effective Date of Prices	**Direct Price**	**50% of Direct Price**	**Direct -300 Bed Price**	**50% of Direct -300 Bed Price**	**Total Direct Component of Price for -300 Bed Peer Group**
1/1/2017	**$119.02**	**$59.21**	**$111.71**	**$55.86**	**$115.37**

	Direct Component of the Price Medicare Part B Eligible Price, Medicare Part B and Part D Eligible Price (-300 Bed Peer Group)				
Effective Date of Prices	**Direct Price**	**50% of Direct Price**	**-300 Bed Price**	**50% of Direct -300 Bed Price**	**Total Direct Component of Price for -300 Bed Peer Group**
1/1/2017	**$117.39**	**$58.70**	**$110.14**	**$55.07**	**$113.76**

	Indirect Component of the Price (HBF +300 Bed Peer Group)				
Effective Date of Prices	**Indirect Price**	**50% of Indirect Price**	**Indirect HBF +300 Bed Price**	**50% of Indirect HBF +300 Bed Price**	**Total Indirect Component of Price for HBF +300 Bed Peer Group**
1/1/2017	**$59.80**	**$29.90**	**$69.23**	**$34.62**	**$64.52**

	Indirect Component of the Price (-300 Bed Peer Group)				
Effective Date of Prices	**Indirect Price**	**50% of Indirect Price**	**Indirect -300 Bed Price**	**50% of Indirect -300 Bed Price**	**Total Indirect Component of Price for -300 Bed Peer Group**
1/1/2017	**$59.80**	**$29.90**	**$54.55**	**$27.28**	**$57.18**

ATTACHMENT B
OPERATING COMPONENT OF THE RATE

Operating Component of the Rate

The rates effective January 1, 2017 reflect the pricing methodology and as prescribed by regulation (Part 86-2.40). The direct and indirect component of the rates effective January 1, 2017 will reflect the prices found in attachment A. Please note the prices do not reflect facility specific case mix adjustments, wage equalization factor (WEF) adjustments, quality, or minimum wage adjustments.

Case Mix Adjustment

The January 2017 rates include an adjustment to the direct component prices to reflect the Minimum Data Set census data from the July 2016 census collection. The rates may contain an adjustment to limit the impact for any facility that reported a case mix change of greater than plus or minus five percent from the latest processed case mix adjustment. The allowable positive and negative adjustments establish a floor and ceiling decrease / increase for facilities. If a facility's case mix dropped below the floor, the facility's change is limited to no less than the floor. Conversely, if a facility reported case mix above the ceiling level, the facility was held to the ceiling increase as calculated for the individual facility.

ATTACHMENT C
MINIMUM WAGE

The Minimum Wage Act (Article 19 of the New York State Labor Law) establishes minimum wage increases beginning January 1, 2017.

The New York State Department of Health (NYSDOH) in collaboration with Nursing Home Associations and industry representatives identified specific labor costs attributable to minimum wage increases by conducting a wage survey, completed by the skilled nursing facilities. The method for collecting information and calculating impacts may change in subsequent years. For those facilities that reported zero impact from the 2017 minimum wage levels, no adjustment to the rates will be made. For those facilities that reported a minimum wage impact, the methodology used to calculate the rate adjustment is as follows:

- The minimum wage impact was based on a total number of hours worked by skilled nursing facility workers and contract staff at wage levels below the new 2017 minimum wage amount.

- Minimum wage increases (as determined by amounts reported in the survey) are calculated on a regional basis consistent with the nursing home rate methodology.

- The Department will include rate adjustments, for the increased funding, in the final January 1, 2017 promulgated rates. However, the rate increases will be dependent upon State Plan Amendment approval by The Centers for Medicare and Medicaid Services.

- The aggregate additional funds paid to nursing homes shall be paid out entirely to workers for appropriate statutory wage obligations (including the direct salary costs and related fringe benefits of minimum wage).

- Providers cannot use any of these additional funds for any purpose other than appropriate statutory wage obligations directly associated to the minimum wage increase and shall reserve unspent funds to be returned to the State in the next reimbursement cycle through a rate adjustment or some other mechanism, as determined by the Department of Health. In compliance with the appropriation language included in the SFY 2016-17 Budget, which states: “Each eligible organization…may be required to submit written certification… attesting to the total amount of funds used by the eligible organization, how such funding will be or was used for purposes eligible under these appropriations and any other reporting deemed necessary by the commissioner.” the Department intends to issue minimum wage cost report modifications to ensure dollars were used appropriately . Dollars that were used inappropriately will be returned to the State through a future rate adjustment or some other mechanism, as determined by the Department of Health, in the next rate cycle. The Department will use this cost report data and other reported data to develop future minimum wage reimbursement rates. The Department reserves the right to request any additional data necessary to assist with the development of these future minimum wage reimbursement rates.

- OMIG will also conduct audits of all providers to ensure that payments were made in accordance with statutory requirements and the method discussed above. Nursing home providers shall maintain all records and reports required to verify that appropriate salary increases directly associated with the minimum wage increase were made and shall present them to OMIG upon request.

ATTACHMENT D
CAPITAL COMPONENT OF THE RATE

The Department of Health (the Department) has posted the final 2017 capital component rate sheets for each RHCF-4 and RHCF-2 filer on the Health Commerce System (HCS). The capital component of the rate will be zero for facilities that have not properly submitted and certified their 2015 cost report or filed all of the required related company financial statements.

Capital Attestation

All of the capital attestations received may not be reflected in the final 2017 capital component due to the following reasons:

- The Department was unable to review the attestation in time to incorporate the adjustments into the final 2017 capital component.
- The attestation was rejected by the Department. The original sender was contacted regarding the rejection in an attempt to revise the attestation to make it acceptable to the Department.

Facilities that file appeals to an attested capital per diem effectively null their attestation, which may cause the capital to revert to the per diem previously provided by the Department.

The Department will continue its review of attestations that have not been accepted or incorporated into the initial capital rates, and anticipates revising the capital rates for those facilities in the near future.

ATTACHMENT E
RATE APPEAL PROCESS

Facilities have 120 days from the posting date of this letter to submit appeals to the rates provided herein. Facilities are also reminded that effective April 1, 2009 the Department will not consider any revisions made to a facility's annual cost report (regardless of the year the cost report applies to) for operating adjustment purposes later than the due date established by the Commissioner.

Operating Rate Appeals: Facilities are reminded that effective April 1, 2009, statute provides the Department will only review operating rate appeals for the correction of computational errors or omissions of data by the Department in determining the operating rate based upon information submitted to the Department prior to the computation of the rate. This applies to all administrative operating appeals submitted to the Department on or after April 1, 2009, regardless of the period they pertain to. Thus, all operating appeals submitted under the timeframes provided in this DAL must be in accordance with these provisions. Operating rate appeals submitted that are not in accordance with these provisions are invalid. Please be advised that the Department will not accept appeals to the MDS data used to calculate case mix.

Capital Rate Appeals: Facilities are reminded that a capital appeal submitted after an attestation has been accepted may result in the reversal of the original attestation adjustments. Only appeals for capital items that affect the 2017 rates are acceptable at this time.

APPEAL SUBMISSIONS FOR ALL FACILITIES (RHCF-4, Hospital Based RHCF-4 and Hospital Based RHCF-2 filers)

The Department's March 3, 2009 DAL (available on the HCS) provided that appeals submitted on or after April 15, 2009 by mediums other than the **Electronic Appeals Submission (EAS) System** would not be accepted. Initially, appeal submission via the EAS System was applicable only for RHCF-4filers. On a going forward basis beginning with the 2014 RHCF and ADHC rates, EAS is being extended to apply to RHCF-2 filers as well. Accordingly, providers that file the RHCF-2 cost report are directed to review the Department's March 3, 2009 DAL for detailed instructions for using the EAS System. The EAS System is accessed through the HCS (https://commerce.health.state.ny.us) by selecting "Application" in the menu bar, then Browse by N and select "Nursing Home Appeal System" from the list. You can refresh your "My Applications" list by clicking on My Account > "Refresh My Application List", click the log out button, then log back in to see the update under My Applications. It should be noted that the publication date to be utilized is the date of this letter, input in the following format 02/25/2015.

The EAS System contains features to provide users with assistance, including links to frequently asked questions (FAQs), a User Guide (Help), and access to regulations related to Medicaid reimbursement for nursing homes (i.e., Title 10 of the New York Code of Rules and Regulations (10 NYCRR)). Most screens provide a small tool bar for the user, allowing creation of a new appeal or quick access to the "appeal search" mechanism.

Questions or issues regarding using the EAS that cannot be resolved by the FAQs or Help links should be submitted via email to the Bureau of Residential Health Care Reimbursement at: nfrates@health.ny.gov.

EMAIL ADDRESS

To provide you with assistance in understanding the methodology used to calculate the rates provided herein, and help us effectively manage and be responsive to the volume of inquiries we receive, the Department has established the following email addresses for the submission of questions: nfrates@health.ny.gov
All email correspondence should include the facility name in the subject line, along with the operating certificate number, the sender's phone number, and question(s) in the body of the email.

ATTACHMENT F
ACCESS THE RATES ON THE HEALTH COMMERCE SYSTEM

- Log Onto the Health Commerce System
- Under the heading *My Applications* select **NH Rate Sheets 4/2009 – Forward**
- Under the heading *Nursing Home Rates Selection List* select **2017 Initial Rates – Final**

ATTACHMENT G
WITHDRAWAL OF EQUITY

Withdrawal of Equity

Beginning April 1, 2009, residential health care facilities may not withdraw equity or transfer assets, which in the aggregate total, exceed 3% of the facility's Medicaid revenue without the Department's approval. Beginning April 1, 2010, the law was updated to state the aggregate limit was 3% of the facility's total reported annual revenue for patient care services. Determination to approve or disapprove the withdrawal of equity or assets are to be made within 60 days of receiving a written request from the facility.

Factors considered when reviewing a request to withdraw equity include: the facility's overall financial condition, indicators of financial distress, delinquent payments owed to the department, and immediate jeopardy or substandard quality of care. If the facility did not request, nor receive, prior approval as required, then an equity withdrawal violation has occurred. Violators have an opportunity for a hearing, after which the commissioner may require replacement of the withdrawn equity or assets and may impose a penalty in an amount not to exceed 10% of any amount withdrawn without prior approval.

Facilities that plan to withdraw equity or transfer assets are required to submit a cover letter to the Department indicating the request for prior approval, and enclose a completed and signed Equity Withdrawal/Transfer of Asset Request Form, available on the HCS. Other financial documents are also required and are indicated on the form. The cover letter and the Form must be sent to the Department via email to nfrates@health.ny.gov .