

ATTACHMENT G WITHDRAWAL OF EQUITY

Withdrawal of Equity

In order to ensure that state and federal Medicaid funding are sufficiently dedicated to providing quality patient care, the state enacted legislation to limit nursing home equity withdrawals. Pursuant to statute, 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 limit withdrawals to 3% in aggregate of the facility's total reported annual revenue for patient care services.

Prior to making any equity withdrawals or asset transfers, facilities 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.

When reviewing a request to withdraw equity, DOH will consider the facility's overall financial condition, indicators of financial distress, delinquent payments owed to the department, and immediate jeopardy or substandard quality of care. 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 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 Violators have an opportunity for a hearing, after which the commissioner may require replacement of the withdrawn equity or assets and may impose a penalty in an amount not to exceed 10% of any amount withdrawn without prior approval.

Enforcement of this provision had been staid pending litigation resolution which has since been resolved. Reviews of requests and cost reports for compliance with this statute will be undertaken in this current year.