

March 15, 2019

VIA E-MAIL: regsqna@health.ny.gov

Ms. Katherine Ceroalo
New York State Department of Health
Bureau of Program Counsel
Regulatory Affairs Unit
Room 2438
Erastus Corning Tower
Nelson A. Rockefeller Empire State Plaza
Albany NY 12237

**Re: Comments on Proposed Regulation ID #HLT-07-18-00002-RP – Medicaid
Reimbursement of Nursing Facility Reserved Bed Days for Hospitalization**

Dear Ms. Ceroalo:

The New York State Health Facilities Association (“NYSFHA”), the largest association of residential health care facility operators in the State of New York, respectfully offers these comments on the above-captioned proposed regulation which was published at pages 34-35 of the January 30, 2019 edition of the State Register.

This regulation purports to implement the amendment to subdivision 25 of § 2808 of the Public Health Law, enacted by the Legislature and signed into law by the Governor pursuant to Chapter 57 of the Laws of 2017. By way of background, Chapter 57 eliminated any payments to skilled nursing facilities for reserved bed days for Medicaid patients 21 years of age or older who are temporarily hospitalized.

The Department of Health, however, later delayed implementation of the statutory amendment by letter to nursing home administrators dated May 12, 2017, advising that until further notice it would continue reimbursing facilities for reserving beds for hospitalized Medicaid patients 21 years of age or older, as the law had existed prior to the enactment of Chapter 57. That meant that for the time being, facilities would be reimbursed at 50% of the

otherwise applicable Medicaid rate for reserving the bed for Medicaid patients who are temporarily hospitalized.

A year later, in 2018 the Legislature passed a bill that would have reinstated the 50% rate, but the Governor reluctantly vetoed the legislation, stating that while he fully supported its objectives, the proposed increase was not supported by any funding sources.

Nevertheless, as previously stated, for the past two years the Department has continued to reimburse nursing homes at the 50% rate for reserving beds for Medicaid patients 21 years of age or older who are temporarily hospitalized. Now, however, the Department proposes to finally implement the law. It should be noted, however, that while this law dictates the elimination of payment for reserving a bed for temporarily hospitalized Medicaid patients 21 years of age or older, it nevertheless requires a State Plan Amendment approval from the Federal Centers for Medicare and Medicaid Services before it can be implemented. In addition, any such implementation should occur **prospectively** only as set forth in the aforementioned May 12, 2017 letter.

A previously proposed regulation, if implemented, would have violated Public Health Law § 2808(25), as amended by Chapter 57 by entirely eliminating the payment for reserving a bed for temporarily hospitalized Medicaid patients 21 years of age or older, while at the same time mandating that skilled nursing facilities must nevertheless continue to reserve beds for such patients, even though they would be paid nothing for doing so. There is no legal basis for this in the current law, and it is our understanding that this version of the regulation eliminates that requirement with respect to temporarily hospitalized patients 21 years of age or older. Please confirm that this is the case.

We reiterate that § 2808(25) of the Public Health Law, as amended, defines a reserved bed day as one “for which a governmental agency **pays** a residential health care facility to reserve a bed” (emphasis supplied). There is, therefore, no legal basis for mandating a facility to reserve a bed for a Medicaid patient, when there will be no payment for such a reservation.

We note that the proposed regulations also purport to reduce the payment to nursing homes for reserving a bed for hospice patients to 50% of the facility’s daily Medicaid rate. This conflicts with existing regulations that state the rate should be 95%, which is paid by the hospice entity to the facility rather than directly by the State or a managed care entity.

Finally, we wish to note that to the extent rates are calculated by the inclusion of reserved bed days, such calculation must exclude such days where there is no payment for such reservation. This is dictated by § 2808(25) which defines a reserved bed day as one for which the government **pays** for such reservation.

We are more than happy to meet with staff of the Department to discuss this issue further. Thank you for your consideration and attention.

Very truly yours,

NEW YORK STATE HEALTH
FACILITIES ASSOCIATION

By: 
Stephen Hanse, President

cc: Hon. Andrew Cuomo, Governor of the State of New York
Hon. Gustavo Rivera, Chair, Senate Health Committee
Hon. Richard Gottfried, Chair, Assembly Health Committee