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MEMORANDUM

TO: Medicaid Advisory Board

FROM: Leslie Wisdom, Esq. 

DATE: April 19, 2013

SUBJECT: Proposed Rule Amendment – *Methods, Standards and Principles for Establishing Medicaid Payment Rates for Long-Term Care Facilities*

The Division of Rate Setting is proposing a change to its rules, *Methods, Standards and Principles for Establishing Medicaid Payment Rates for Long-Term Care Facilities*. These proposed changes will affect nursing home Medicaid rates beginning July 1, 2013.

This proposed rule is the final step in the State's transition from Resource Utilization Group (RUG) III to RUG IV in the nursing home Medicaid rate setting process. The Division of Rate Setting (Division) uses RUG case-mix scores to adjust facilities' Nursing Care cost components of their per diem rates based on the acuity of the residents in the facilities. In order to understand why the Division is proposing this rule, some background and explanation of how we got here may be helpful.

All nursing homes in the country collect clinical data about all nursing home residents in their facilities. This data is reported to the federal government and state governments on a form known as the Minimum Data Set form or MDS form. Based on the clinical data reported on the MDS form, each nursing home resident is classified into a Resource Utilization Group (RUG), which reflects the acuity of the resident and the amount of resources needed to care for the resident.

Effective October 1, 2010, the federal government transitioned from collecting clinical data using the MDS 2.0 form to the MDS 3.0 form. The transition from MDS 2.0 to MDS 3.0 rendered our Vermont-specific RUG III algorithm extinct as the fields of data in the MDS 2.0 form were not analogous to the fields in the MDS 3.0 form and there was no crosswalk between the two forms. At the same time that the MDS 3.0 was introduced, the Centers for Medicare and Medicaid Services (CMS) also introduced the new RUG IV classification system, which linked to the MDS 3.0 form. CMS initiated RUG IV as the result of a national nursing home staff time measurement study to update the federal RUG case-mix weights. The national study was called the Staff Time and



Resource Intensity Verification (STRIVE) project. In the STRIVE study, nursing home staff resource time, resident assessment data and resident drug data were collected for analysis to update the RUG case-mix classification system. The STRIVE project also had extensive stakeholder input from a variety of sources, including educators, researchers, beneficiary advocates, clinicians, consultants and representatives from the health care and nursing home industries. The updated information from STRIVE reflects the most recent care practices and resource needs of nursing homes.

In Vermont, representatives from the Division of Rate Setting, the Department of Disabilities, Aging and Independent Living (DAIL) and the Vermont Health Care Association met regularly for most of 2010 to discuss various approaches to use in April 2011 when the State ran out of MDS 2.0/Vermont-specific RUG III data. It was agreed in this focus group that the State would transition from using its own 1992 RUG III system to the new federal RUG IV resident classification system for setting rates. On the technical side, DAIL implemented a new IT data system to capture the federal MDS 3.0 data and RUG IV case-mix score information.

The rate setting piece of the project required two steps to transition to RUG IV. In order to begin the process and implement the first step, the Division adopted a transitional rate setting rule in 2011 that allowed the Division to set Medicaid rates using base year Vermont RUG III average case-mix scores for each facility and adjust rates quarterly based on the percentage change in current RUG IV average case-mix scores for each facility. The Nursing Care component of each facility's per diem rate is the only component affected by changes in facility-specific average case-mix scores. The Division rebases the Nursing Care component of facilities' rates every two years. The last rebase was on July 1, 2011 and used base year 2009 Nursing Care costs. At that time, the transitional rate setting rule allowed the Division to use base year RUG III case-mix scores and update rates quarterly based on changes in RUG IV average case-mix scores for each facility.

The Division is due to rebase Nursing Care costs again on July 1, 2013. The new Nursing Care costs base year will be base year 2011, which is the first full year that RUG IV case-mix scores are the only scores available. This proposed rule is the second and final step in the transition to RUG IV and will replace the Vermont RUG III classification system in the rate setting rules with RUG IV and will replace the transitional rate setting rule that incorporated RUG III and RUG IV together in the rate setting process with the final RUG IV rule. This proposed rule is necessary to allow the Division to rebase Nursing Care costs on July 1 with RUG IV case-mix scores in both the base year all-payor case mix score for each facility as well as the quarterly average Medicaid case-mix score updates to the rates. RUG III is no longer available and the Division could not rebase Nursing Care costs if this rule is not adopted.

The anticipated economic impact of this proposed rule is a one-time annual savings to the Medicaid program of approximately \$235,000, which is due to the transition from using the Vermont RUG III four quarter case-mix score average in facilities' rates to a pure RUG IV rate setting methodology.

Highlights by Subsection

The substantive portion of this proposed rule is the final transition from RUG III to RUG IV in the rate setting process. The following highlights each proposed change by subsection:

- § 1.9(a) – replaces the reference of Vermont version of 1992 RUG III with federal RUG IV as the case-mix classification system that the Division of Licensing and Protection will use to report facilities' data to the Division of Rate Setting.
- § 5.1(b)(2) – replaces the Vermont RUG III reference of the case-mix classification system used in the rate setting process with RUG IV.
- § 7.2(a) – this is the substantive part of the proposed rule that replaces the old Vermont RUG III case-mix group codes, case-mix weights and descriptions with the new RUG IV system.
- § 16 – replaces the definition of RUG III with RUG IV.
- § 17 – deletes the transitional rate setting rule as it is no longer needed and specifies that the RUG IV rate setting rule will apply to rates set as of July 1, 2013.
- The rule also includes a few other minor changes to replace the reference to Office of Vermont Health Access with Department of Vermont Health Access as well as replace the reference of Director with Commissioner of that department. Also, the rule includes a change in the definition of the Director of Rate Setting to reflect the current title and position.

Attached, please find the annotated rule showing the proposed changes. Thank you!