HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 81, "Nursing Facilities," Iowa Administrative Code.

Medicaid reimbursement rates for nursing facilities were reduced in December 2009 as a result of Executive Order 19. These amendments modify those reductions as follows:

• The minimum occupancy rate that is used in calculating facility per diem cost, pay-for-performance reimbursement, and the capital cost per diem instant relief add-on and enhanced non-direct care rate component limit is reinstated to 85 percent effective December 1, 2009.

• The payment for periods when a resident is absent from the facility is modified, eliminating payments for reserve bed days due to visit or hospitalization. The exception is special population facilities, which will be paid at 42 percent of their per diem for the allowable number of days of absence, regardless of the occupancy rate.

• The pay-for-performance program is suspended for state fiscal year 2010 and will continue to be suspended unless funding is appropriated.

These amendments do not provide for waivers in specified situations because these payment provisions were set by legislative action. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on July 21, 2010.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because these amendments merely conform the rules to legislative directives in 2010 Iowa Acts, Senate File 2366.

These amendments are intended to implement Iowa Code section 249A.4, Iowa Code chapter 249K, 2009 Iowa Code Supplement chapter 249L, and 2010 Iowa Acts, Senate File 2366, division VII.

These amendments shall become effective on September 15, 2010.

The following amendments are adopted.

ITEM 1. Amend subparagraph **81.6(16)"a"(1)** as follows:

(1) Non-state-owned nursing facilities. ~~Patient~~ Effective December 1, 2009, patient days for purposes of the computation of administrative, environmental, and property expenses for non-state-owned facilities shall be inpatient days as determined in subrule 81.6(7) or ~~90~~ 85 percent of the licensed capacity of the facility, whichever is greater. Patient days for purposes of the computation of all other expenses shall be inpatient days as determined in subrule 81.6(7).

ITEM 2. Amend paragraph **81.6(16)"g,"** introductory paragraph, as follows:

g. Pay-for-performance program. ~~Additional~~ Effective July 1, 2010, additional reimbursement based on the nursing facility pay-for-performance program is available for non-state-owned facilities ~~effective July 1, 2009,~~ as provided in this paragraph in state fiscal years for which funding is appropriated by the legislature. The pay-for-performance program provides additional reimbursement based upon a nursing facility's achievement of multiple favorable outcomes as determined by established benchmarks. The reimbursement is issued as an add-on payment after the end of ~~the~~ any state fiscal year (which is referred to in this paragraph as the "payment period") for which there is funding appropriated by the legislature.

ITEM 3. Amend subparagraph **81.6(16)"g"(10)**, introductory paragraph, as follows:

(10) Calculation of potential add-on payment. The number of points awarded shall be determined annually, for each state fiscal year for which funding is appropriated by the legislature. A determination is made on whether a facility qualifies for an add-on payment at the end of the payment period. Based upon the number of points awarded, a retroactive add-on payment is made effective beginning the first day of the payment period as follows, contingent upon legislative funding for the state fiscal year, and subject to subparagraph (11):

ITEM 4.   Amend subparagraph **81.6(16)"h"(9)** as follows:

(9)   Calculation of capital cost per diem instant relief add-on. The capital cost per diem instant relief add-on is calculated by dividing the annual estimated property costs for the complete replacement, new construction, or major renovation project for which the add-on is granted by the facility's estimated annual total patient days.

1.   ~~Total~~ Effective December 1, 2009, total patient days shall be determined using the most current submitted financial and statistical report or using the estimated total patient days as reported in the request for the add-on. For purposes of calculating the add-on, total patient days shall be the greater of the estimated annual total patient days or ~~90~~ 85 percent of the facility's estimated licensed capacity.

2. and 3. No change.

ITEM 5.   Amend subparagraph **81.6(16)"h"(12)** as follows:

(12) Reconciliation of capital cost per diem instant relief add-on. During the period in which the capital cost per diem instant relief add-on is granted, the Iowa Medicaid enterprise shall recalculate the amount of the add-on based on actual allowable costs and patient days reported on the facility's submitted annual financial and statistical report. A separate reconciliation shall be performed for each cost report period in which the capital cost per diem instant relief add-on was paid. The facility shall submit with the annual financial and statistical report a separate schedule reporting total patient days per calendar quarter and a current depreciation schedule identifying the assets related to the add-on.

1.   ~~For~~ Effective December 1, 2009, for purposes of recalculating the capital cost per diem instant relief add-on, total patient days shall be based on the greater of the number of actual patient days during the period in which the add-on was paid or ~~90~~ 85 percent of the facility's actual licensed bed capacity during the period in which the add-on was paid.

2.   No change.

ITEM 6.   Amend rule **441—81.6(249A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~249A.2(7), 249A.3(2)"c,"~~ 249A.4~~,~~ and 249A.16, Iowa Code chapter 249K, and ~~2009 Iowa Acts, Senate File 476~~ 2009 Iowa Code Supplement chapter 249L.

ITEM 7.   Amend paragraph **81.10(4)"f"** as follows:

f.   ~~Payment~~ Effective December 1, 2009, payment for periods when residents are absent for a visit, vacation, or hospitalization shall be made at ~~42~~ zero percent of the nursing facility's rate, except for special population facilities, which shall be paid for such periods at 42 percent of the facility's rate. ~~Payment for periods when residents are absent for hospitalization shall:~~

~~(1)   Be made at 25 percent of the nursing facility's rate if the facility occupancy percentage is 95 percent or greater.~~

~~(2)   Not be made if a facility's occupancy percentage is less than 95 percent.~~

~~(3)   Be made at 42 percent of the nursing facility's rate for special population facilities.~~

ITEM 8.   Amend subparagraph **81.10(5)"e"(1)** as follows:

(1)   The resident, the resident's family, or friends may pay to hold the resident's bed in cases where a resident who is not discharged from the facility ~~spends over 18 days per year on visits (or longer under 81.10(4)"d") or spends over 10 days per calendar month on a hospital stay~~ is absent overnight. ~~These supplementation payments shall not exceed the amount the department would pay to hold the bed under paragraph 81.10(4)"f."~~ When the resident is discharged, the facility may handle the holding of the bed in the same manner as for a private paying resident.

ITEM 9.   Adopt the following **new** implementation sentence in rule **441—81.10(249A)**:

This rule is intended to implement Iowa Code section 249A.4.

ITEM 10.   Amend subrule 81.20(3) as follows:

81.20(3) ~~Payment~~ Effective December 1, 2009, payment for periods when residents are absent for visitation or hospitalization will be made to out-of-state facilities at ~~75~~ zero percent of the rate paid to the facility by the Iowa Medicaid program.

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