

Pursuant to the authority vested in the Commissioner of Health by Public Health Law, Section 2808 17(c), Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, section 86-2.14 (b) and (f) are amended to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 86-2.14 (b) is amended as follows:

(b) An application by a residential health care facility for review of a certified rate is to be submitted on forms provided by the department and shall set forth the basis for the appeal and the issues of fact. Documentation shall accompany the application, where appropriate, and the department may request such additional documentation as determined necessary. An application based upon error shall be submitted within the time limit set forth in section 86-2.13 of this Subpart. Beginning with appeals for rate year 1983 and, on an annual basis thereafter for all subsequent rate year appeals, the commissioner shall act upon all properly documented applications for a rate year based upon errors within one year of the end of the 120-day period referred to in section 86-2.13(a) of this Subpart. The commissioner shall act upon all other properly documented applications for a rate year appeal submitted pursuant to paragraphs (1) and (3)-(7) of subdivision (a) of this section within one year of the end of the aforementioned 120-day period or the receipt of such applications, whichever date is later. [In the event the department requests additional documentation, the one-year time limit shall be extended for a mutually agreed upon time period for receipt of the documentation established by the commissioner in conjunction with the residential health care facility. The deadline will be set according to the nature and quantity of documentation necessary.] In the event the department requests additional documentation, if the additional documentation requested is not received

within 30 days from the request date, then the rate appeal shall be deemed denied by the commissioner. The one-year time limit shall not apply to rate appeals submitted pursuant to section 86-2.13(b) of this Subpart.

(1) The affirmation or revision of the rate upon such staff review shall be final, unless within 30 days of its receipt a hearing is requested, by registered or certified mail, before a rate review officer on forms supplied by the department. The request shall contain a statement of the factual issues to be resolved. The facility may submit memoranda on legal issues which it deems relevant to the appeal.

(2) Where the rate review officer determines that there is no factual issue, the request for a hearing shall be denied and the facility notified of such determination. No administrative appeals shall be available from this determination. The rate review officer, where they determine that there is factual issue, shall issue a notice of hearing establishing the date, time and place of the hearing and setting forth the factual issues as determined by such officer. The hearing shall be held in conformity with the provisions of Public Health Law, section 12-a and the State Administrative Procedure Act.

(3) The recommendation of the rate review officer shall be submitted to the Commissioner of Health for final approval or disapproval and recertification of the rate where appropriate.

(4) The procedure set forth in this subdivision shall apply to all applications for rate reviews which are pending as of April 1, 1978. Rate appeals filed prior to April 1, 1978 will not be required to be resubmitted subsequent to April 1, 1978.

Section 86-2.14 (f) is amended as follows:

(f) [Reserved] (1) For purposes of subdivision (b) of this section, the commissioner shall establish an appeal review priority for all properly documented rate year appeals from providers experiencing financial distress, defined as having a negative operating margin based on the most recent cost report data available.

(2) Appeals from providers experiencing financial distress shall be prioritized by residential health care facility with the largest operating loss divided by patient days and proceed down the prioritized list until all appeals of providers experiencing financial distress have been processed. Rate appeals from providers who are not experiencing financial distress will be processed in order of the smallest operating profit divided by patient days after all rate appeals from a residential health care facility experiencing financial distress have been processed.

(3) Rate Appeals Cap. The department may process all rate appeals up to the annual monetary cap set in paragraph (b) of subdivision (17) of section 2808 of the Public Health Law. If the department reaches the monetary cap without adjudicating all appeals for that year the remaining appeals may be processed in subsequent years.

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

The statutory authority for this regulation is contained in Public Health Law §2808 subparagraph 17 (c), which states that the commissioner shall promulgate regulations, and may promulgate emergency regulations, establishing priorities and time frames for processing Nursing Home Facility rate appeals.

### **Legislative Objectives:**

To establish fair and appropriate time frames and priorities for processing rate appeals.

### **Needs and Benefits:**

This clarification allows for the Department to act more efficiently in prioritizing and processing Nursing Home Facility rate appeals. By reducing the allowable time to submit additional documentation for appeals the Department will be able to reduce the review and processing time. By establishing an appeal review priority based on financial distress, the Department will have an established methodology for prioritizing appeals. Using the operating margin from the most recent cost report data is an accurate and measurable indicator for financial distress.

### **Costs:**

There is no financial impact or cost of this proposed regulation change.

### **Costs for the Implementation of, and Continuing Compliance with the Regulation to the**

### **Regulated Entity:**

There will be no costs to regulated entities for this change in regulation.

### **Costs to State and Local Governments:**

There will be no costs to the State or Local Governments for this change in regulation.

**Costs to the Department of Health:**

There is no financial impact or cost of this proposed regulation change.

**Local Government Mandates:**

There are no local government mandates due to this change in regulation.

**Paperwork:**

There will be a change in the allowable time that facilities can submit additional documentation for filed rate appeals. This regulation change requires that additional information be submitted to the Department within 30 days from the request date.

**Duplication:**

There is no duplication, overlap, or conflict with any other rules or legal requirements by State and Local governments.

**Alternatives:**

A court decision directed the Department to outline its process for expediting its rate appeal process.

**Federal Standards:**

This regulation does not exceed any minimum standard of the federal government for the same or similar subject areas.

**Compliance Schedule:**

The residential health care facilities are already in compliance with reporting requirements. The regulations will be effective upon publication of a Notice of Adoption in the New York State Register.

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**STATEMENT IN LIEU OF  
REGULATORY FLEXIBILITY ANALYSIS**

No Regulatory Flexibility Analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

**STATEMENT IN LIEU OF  
RURAL AREA FLEXIBILITY ANALYSIS**

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.



**STATEMENT IN LIEU OF  
JOB IMPACT STATEMENT**

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.