SUMMARY OF EXPRESS TERMS

The New York State Nursing Home Quality Pool (NHQP) is an annual budget-neutral pool that was established in the 2010-2011 final State budget. The amount of the pool is $50 million dollars, or as determined by the Commissioner. The pool was created to incentivize Medicaid-certified nursing facilities across New York State to improve the quality of care for their residents, and to reward facilities for quality based on their performance. The set of measures used to evaluate nursing homes are part of the Nursing Home Quality Initiative (NHQI). The New York State Department of Health (NYS DOH) works in consultation with a workgroup of NYS DOH staff and industry experts comprised of representatives from nursing home associations and patient advocates to assist in the development of the NHQI. The performances of facilities in the NHQI guide the distribution of the funds in the NHQP.

The NHQI contains measurement components comprised of quality measures, compliance measures, efficiency measures, and satisfaction measures, if and when satisfaction data becomes available. The measures included in the initiative are decided upon with input and advice from the workgroup based on expert opinions, industry standards, and quality measure outcomes being assessed at the national level.

The NYS DOH assesses the facilities on their performance in all components of the NHQI as compared to their peers. Facilities are categorized into quintiles based on the distribution of their overall scores. Under the payment methodology of the NHQP, the

funding of the pool is achieved by an across-the-board Medicaid rate reduction for all eligible facilities. The amount of a nursing home's Medicaid rate reduction is proportional to the nursing home's Medicaid rate as of January 1 of the payment year, and its total number of Medicaid patient days accrued during the measurement year on which the NHQI is based. The pool money is redistributed to the facilities based on their quintile placement. Facilities in the top three quintiles receive distributions, with facilities in the first quintile receiving a proportion larger than facilities in the second and third quintiles, and facilities in the second quintile receiving a proportion larger than facilities in the third quintile. The facilities in the fourth and fifth quintiles do not receive a redistribution. Additionally, if a facility receives a health inspection survey deficiency of a letter J, K, or L between July 1 of the measurement year and June 30 of the payment year, the facility is not eligible to receive a redistribution, regardless of its quintile placement.

Pursuant to the authority vested in the Commissioner of Health by Section 2808(2-c)(d) of the Public Health Law as enacted by Section 95 of Part H of Chapter 59 of the Laws of 2011, Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York, is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, by adding a new section 86-2.42 to read as follows:

86-2.42. Residential health care facility quality pool.

(a) For the calendar year 2013 and thereafter, the Commissioner shall establish a residential health care facility quality pool for the purpose of making quality incentive payments to facilities meeting the criteria set forth in this section. This program shall be referred to as the Nursing Home Quality Pool (NHQP). The amount of the NHQP shall be $50 million or as determined by the Commissioner. The financial awards to facilities shall be determined by their performances in the Nursing Home Quality Initiative (NHQI). The measures on which facilities will be evaluated in the NHQI are described below.

(1) The NHQI shall contain measurement components comprised of quality measures, compliance measures, efficiency measures, and satisfaction measures, if and when satisfaction data becomes available. Each measure shall be awarded points based on the facility's performance in the measure. The points from each measure shall be summed to create an overall score. Nursing

homes shall be categorized into quintile placements based on the distribution of the overall scores.

(b) From the NHQI, the Commissioner shall exclude:

(1) Non-Medicaid facilities, Special Focus Facilities as designated by the Centers for Medicare and Medicaid Services (CMS), Continuing Care Retirement Communities, Transitional Care Units, specialty facilities, and specialty units within facilities. Specialty facilities and specialty units shall include AIDS facilities or discrete AIDS units within facilities, facilities or discrete units within facilities for residents receiving care in a long-term inpatient rehabilitation program for traumatic brain injured persons, facilities or discrete units within facilities that provide specialized programs for residents requiring behavioral interventions, facilities or discrete units within facilities for long-term ventilator dependent residents, and facilities or discrete units within facilities that provide services solely to children.

(2) A facility that is excluded from the NHQI shall not be subject to the Medicaid rate reduction or the fund redistribution methodology of the NHQP.

(c) Each facility that is not excluded from the NHQI shall be subject to a Medicaid rate reduction to fund the NHQP. The Medicaid rate reduction shall be calculated as follows:

(1) The Medicaid revenue for each facility shall be calculated by multiplying the facility's promulgated Medicaid rate as of January 1 of

the payment year by the facility's total Medicaid patient days, as reported in the facility's cost report from the measurement year on which the NHQI is based. The facility's Medicaid revenue shall be divided by the sum of the Medicaid revenues from all facilities in the NHQI. The result shall be multiplied by the pool amount, and divided by each facility's Medicaid patient days as described above. If a facility failed to submit a cost report for the measurement year on which the NHQI is based, the number of Medicaid patient days from the most recent cost report shall be used.

(d) The pool amount shall be redistributed to facilities as follows:

(1) Facilities shall be categorized into quintile placements based on the distribution of the overall scores in the NHQI. The pool money shall be redistributed to facilities based on their quintile placements. Facilities in the top three quintiles shall receive distributions, with facilities in the first quintile receiving a proportion larger than facilities in the second and third quintiles, and facilities in the second quintile receiving a proportion larger than facilities in the third quintile. To determine the proportions awarded to facilities in the first, second, and third quintiles, the total Medicaid revenue for facilities in such quintiles shall be multiplied by award factors of 3, 2.25, and 1.5, or as determined by the Commissioner, respectively. Facilities in the fourth and fifth quintiles shall not receive a redistribution. Additionally, if a facility receives a health inspection survey deficiency of a letter J, K,

or L between July 1 of the measurement year and June 30 of the payment year, the facility shall not be eligible to receive a redistribution, regardless of its quintile placement. Payments shall be paid as per diem adjustments for the payment year. The payment formula for facilities in the top three quintiles is shown in the table below.

Distribution of NHQP Payments			
Facilities Grouped by Quintile	A Facility's Medicaid Revenue Multiplied by Award Factor	B Share of Pool Allocated to Facility	C Facility Per Diem Payment
Quintile 1	Each facility's Medicaid patient days from the measurement year multiplied by the Medicaid Rate as of January 1 of the payment year= Total Medicaid Revenue, multiplied by an award factor of 3, or an award factor as determined by the Commissioner	Each facility's column A Divided by Sum of Total Medicaid Revenue for all facilities, Multiplied by the pool amount	Each facility's column B divided by the facility's Medicaid patient days from the measurement year
Quintile 2	Each facility's Medicaid patient days from the measurement year multiplied by the Medicaid Rate as of January 1 of the payment year= Total Medicaid Revenue, multiplied by an award factor of 2.25, or an award factor as determined by the Commissioner	Each facility's column A Divided by Sum of Total Medicaid Revenue for all facilities, Multiplied by the pool amount	Each facility's column B divided by the facility's Medicaid patient days from the measurement year

Quintile 3	Each facility's Medicaid patient days from the measurement year multiplied by the Medicaid Rate as of January 1 of the payment year= Total Medicaid Revenue, multiplied by an award factor of 1.5, or an award factor as determined by the Commissioner	Each facility's column A Divided by Sum of Total Medicaid Revenue for all facilities, Multiplied by the pool amount	Each facility's column B divided by the facility's Medicaid patient days from the measurement year
Total	Sum of Total Medicaid Revenue for all facilities	Sum of column B = pool amount	--

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for this regulation is contained in Section 2808(2-c) of the Public Health Law (PHL) as enacted by Section 95 of Chapter 59 of the Laws of 2011, which authorizes the Commissioner to promulgate regulations, including emergency regulations, with regard to Medicaid reimbursement rates for residential health care facilities. Such rate regulations are set forth in Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York.

Legislative Objectives:

Subpart 86-2 of Title 10 will be amended by adding a new section 86-2.42 to provide for the creation of a residential health care facility quality pool intended to improve the quality of care among nursing home residents in Medicaid-certified facilities, and to reward facilities based on their performance compared to their peers. This program shall be referred to as the Nursing Home Quality Pool (NHQP).

The proposed regulation permits the Commissioner to reward facilities in the NHQP based on their performance in the Nursing Home Quality Initiative (NHQI). The NHQI contains measurement components in the areas of quality, compliance, efficiency, and satisfaction, if and when satisfaction data becomes available. Failure to achieve high performance in the NHQI, as determined by the Commissioner, shall be a basis for declining to award NHQP dollars to a facility.

Needs and Benefits:

The NHQP is necessary to incentivize nursing facilities to maintain and improve the quality of care for their residents. The benefits of the NHQP include improving

quality of care and, in turn, reducing overall health care costs. Specific benefits that fall under the umbrella of improving quality of care include reducing the percent of residents with pressure ulcers, reducing antipsychotic medication use, reducing urinary tract infections, reducing depression, reducing pain, reducing unnecessary weight loss, and reducing avoidable hospitalizations. These quality of care improvements are associated with reductions in health care costs and improved quality of life for nursing home residents. The additional reimbursement provided by this adjustment will support the intent of the quality pool. Facilities can use the additional funds to facilitate quality improvements through activities including, but not limited to, increasing direct care staffing levels, providing training and education for staff, and utilizing technology.

Costs:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. No additional data will be requested from facilities.

Costs to State Government:

There is no additional aggregate increase in Medicaid expenditures anticipated as a result of these regulations.

Costs to Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this proposed regulation.

Local Government Mandates:

The proposed regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

The proposed regulation does not have any paperwork requirements for nursing facilities.

Duplication:

This is a new State regulation and does not duplicate any existing federal, state or local regulations.

Alternatives:

The authorizing statute, PHL Section 2808(2-c), specifically provides for facilitating quality improvements through the establishment of the Nursing Home Quality Pool. Therefore, no alternatives were considered. The Department of Health worked in consultation with a workgroup of NYS DOH staff and industry experts comprised of representatives from nursing home associations and patient advocates to assist in the development of the NHQI. The measures included in the NHQI were decided upon with input and advice from the workgroup based on expert opinions, industry standards, available data, and quality measure outcomes being assessed at the national level. During development, the workgroup also provided input on the scoring methods of such quality measure outcomes. The performances of facilities in the NHQI guide the distribution of the funds in the NHQP. The workgroup will continue to provide input for future years of the NHQI.

Federal Standards:

The proposed regulation does not exceed any minimum standards of the federal government for the same or similar subject area.

Compliance Schedule:

This rule does not create new compliance or reporting requirements for nursing facilities in New York State.

Contact Person: Katherine Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm 2438
Empire State Plaza
Albany, NY 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

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

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas. The Nursing Home Quality Pool places no additional reporting requirements on any nursing facility or locality. The data used in the calculation of the NHQI measures are culled from existing data sources including the nursing home cost report (RHCF-4, RHCF-2), data from the DOH Bureau of Immunization, Statewide Planning and Research Cooperative System data, and data from the Centers for Medicare and Medicaid Services. The data used to determine the Medicaid rate reduction and payment distributions for the NHQP are culled from the nursing home cost report (RHCF-4, RHCF-2) and nursing home Medicaid reimbursement rates.

JOB IMPACT STATEMENT

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation has no implications for job opportunities.

ASSESSMENT OF PUBLIC COMMENT

The Department of Health (the "Department") received comments from nursing home associations, healthcare providers, and other members of the public on the proposed rulemaking. The comments are summarized below with the Department's responses.

COMMENT: A commenter stated that the regulations should be written to apply to 2013 and all subsequent years.

RESPONSE: In response to this comment, the regulations will be revised to apply to 2013 and all subsequent and future years of the NHQP.

COMMENT: A commenter stated that because the regulations only pertain to rate year 2013 and do not address 2014 and beyond, the Department may not take any action related to the NHQP for 2014 and beyond.

RESPONSE: In response to this comment, the regulations will be revised to apply to 2013 and all subsequent and future years of the NHQP.

COMMENT: A commenter stated that the regulations are unenforceable because they are written for rate year 2013, which is now in the past, and therefore they are improperly retroactive. The commenter added that if the regulations did pertain to 2014, 2015, and 2016, they would also be improperly retroactive because those years are in the past.

RESPONSE: No changes to the proposed regulations were made in response to this comment. The regulations are not improperly retroactive. The Department has the

authority to retroactively adjust Medicaid reimbursement rates. Rates are continually adjusted retroactively as appeals are processed and audits are carried out. The Department is continually processing appeals for prior years and making retroactive adjustments to a facility's Medicaid rate, and the adjustment can be positive or negative. Additionally, under 18 NYCRR 517.3(2), the Office of the Medicaid Inspector General has the authority to audit rates and recoup Medicaid overpayments made to a facility up to six years prior.

COMMENT: A commenter stated that the structure of the NHQP is logically unsound because it takes funds away from poor-performing facilities and awards those funds to high-performing facilities. The commenter also stated that facilities with lower Medicaid reimbursement rates will perform poorly in the NHQP.

RESPONSE: No changes to the proposed regulations were made in response to these comments. Funding of the NHQP is achieved through an across-the-board Medicaid rate reduction for all Medicaid-funded nursing facilities in the State, regardless of performance in the NHQP. Analysis of Medicaid reimbursement rates compared to the quintile performance of facilities in the NHQP has shown that each quintile contains facilities spanning the high and low ends of Medicaid reimbursement rates. There are facilities with low Medicaid reimbursement rates in Quintile 1, which is the highest-performing quintile, and there are facilities with high Medicaid reimbursement rates in Quintile 5, which is the poorest-performing quintile.

COMMENT: A commenter stated that the NHQP is unsupported by any legislation.

RESPONSE: No changes to the proposed regulations were made in response to this comment. The NHQP is supported by legislation. The Department has legislative authority to enact regulations to implement Public Health Law § 2808(2-c)(d). The legislature gave the Department this authority in 2011 when the statute was enacted.

COMMENT: A commenter stated that the quality measures used to evaluate facilities in the NHQP are not appropriate and do not consider the unique circumstances of each facility.

RESPONSE: No changes to the proposed regulations were made in response to this comment. Fourteen of the eighteen total measures used in the 2013 NHQP are nationally-vetted quality measures developed by the Centers for Medicare and Medicaid Services (CMS). Two additional quality measures were developed with input and guidance from the NHQP workgroup, which consists of representatives from LeadingAge New York, New York State Health Facilities Association (NYSHFA), Greater New York Hospital Association (GNYHA)/Continuing Care Leadership Coalition (CCLC), The Healthcare Association of New York State (HANYS), as well as nursing home patient advocates. The remaining two measures are compliance measures which nursing facilities have contractual obligations to meet. To account for differences across facilities, the Department risk adjusts several measures and applies exclusions that have been agreed upon with guidance and input from workgroup members.

COMMENT: A commenter stated that to improve quality, the Medicaid reimbursement rates need to be equalized, and facilities with different Medicaid reimbursement rates cannot be compared.

RESPONSE: No changes to the proposed regulations were made in response to this comment. All nursing facilities are reimbursed using a pricing methodology which utilizes a peer group methodology. The peer groups are defined as facilities with less than 300 beds and those facilities which are either hospital based or have 300 or more beds. Through the use of the pricing methodology, facilities are as close as possible to equalized operating component rates. Differences in facility rates are a factor of the different facility case mixes and the capital components of the rates.

COMMENT: A commenter stated that because two different health inspection survey tools are used in different regions of the State, facilities cannot be compared across regions.

RESPONSE: The Department recognizes that two health inspection survey tools are used in the State. In response to this, the Department adjusted the health inspection scores by region beginning with the 2014 NHQP.

COMMENT: A commenter stated that because facilities must comply with minimum wage increases, the rate disparity between rural and urban areas will be minimal. The commenter added that rural areas have property taxes and higher supply costs due to shipping costs.

RESPONSE: No changes to the proposed regulations were made in response to this comment. These comments are beyond the scope of the proposed regulations.

COMMENT: A commenter stated that the NHQP provides money to special interests.

RESPONSE: No changes to the proposed regulations were made in response to this comment. The NHQP does not provide money to special interests. The NHQP methodology follows an objective format, evaluating facilities using vetted measures and assigning an overall score and quintile to that facility based on its performance in the measures. A facility is awarded funds using a mathematical payment formula that incorporates a facility's quintile placement, total Medicaid patient days, and Medicaid reimbursement rate.

COMMENT: A commenter stated that the NHQP is a regressive tax designed to close facilities.

RESPONSE: No changes to the proposed regulations were made in response to this comment. The NHQP is not a regressive tax designed to close facilities. The adjustments to the Medicaid reimbursement rates do not meet the essential feature of a tax because they do not produce at least some revenue for the government. The NHQP provides a monetary award to those facilities that achieve high performance so that they can continue to improve quality of care, and it incentivizes facilities that do not achieve high performance to continue striving to improve quality care.

COMMENT: A commenter stated that the NHQP should not be budget-neutral, and the funds should instead be derived from shared savings from Medicaid Redesign or other funding sources.

RESPONSE: No changes to the proposed regulations were made in response to this comment.

COMMENT: A commenter stated that the NHQP payments should be distributed as close as possible to the end of the reporting year.

RESPONSE: No changes to the proposed regulations were made in response to this comment. The Department acknowledges this suggestion and continues to strive to achieve timely NHQP rate adjustments.

COMMENT: A commenter stated that there has been a lack of communication and documentation regarding how and when the NHQP will be implemented.

RESPONSE: No changes to the proposed regulations were made in response to this comment. The Department sent a Dear Administrator letter and NHQP methodology to facilities in July 2012. The documents contained the methodologies for the 2012 benchmarking NHQP, and the 2013 NHQP. The Department held two regional webinars for facilities on June 10, 2013, and June 12, 2013, to present the NHQP methodology and answer questions. The NHQP workgroup consists of representatives from the five nursing home associations in the state, as well as nursing home patient advocates. The Department held biannual meetings with the workgroup in 2012 and 2013, and held annual meetings in 2014, 2015, 2016, and 2017. The Department will continue to hold

annual NHQP workgroup meetings. After the workgroup meetings, nursing home associations disseminate the information to their members. Several of the associations regularly update their websites with NHQP information that is relevant to their members. The Department releases the NHQP methodology to facilities and the workgroup ahead of the calculations each year.