

**Frequently Asked Questions on Universal Settlement
December 7, 2015**

1. Question: Does my facility need to attend one of the “signing days” and execute documents there in order to participate in the Universal Settlement (US)?

Answer: No. Your facility has the option of printing out the documents, executing them, and mailing one original executed package to the facility’s assigned US Trustee:

*Hinman Straub PC
121 State St.
Albany, NY, 12207
ATTENTION: UNIVERSAL SETTLEMENT AGREEMENT*

-or-

*O’Connell & Aronowitz
54 State St
9th Floor
Albany, NY, 12207
ATTENTION: UNIVERSAL SETTLEMENT AGREEMENT*

2. Question: Where and when are the NYC/Long Island US signing days being held?

*Answer: December 7th, 8th and 9th from 9 a.m. to 5 p.m. **at the LaGuardia Marriott, 10205 Ditmars Boulevard, Suite 811, East Elmhurst, NY 11369.***

3. Question: Who should sign the Agreement?

Answer: Any person authorized to bind the facility in a legal contract and settlement should execute the Agreement.

4. Question: We understand that facilities need to return the US Agreement and any applicable releases (and stipulations of discontinuance in some cases). Do facility representatives need to bring printed copies to the signing days? Do facilities also need to include all the appendices in the documents they remit to the State or the US Trustee?

Answer: For those executing the documents in-person at one of the signing days, a printed copy of the facility’s package will be available at the site to be signed, and will include all appendices. For those that do not sign in person, they should return the entire package, including appendices, by certified mail to the assigned US Trustee as noted in question #1.

5. Question: The US Agreement doesn't appear to include a space to write out the name of the facility for which the documents are being executed, although the release forms do. Is this something that needs to be addressed?

Answer: There is a signature line on page 27 of the Agreement that has lines for DOB, DOH, OMIG and the “Nursing Home Facility”. The individual executing the agreement should consider writing in the name of the facility near that wording, but this is not required.

6. Question: Is there any process to confirm the authorization (and for those who sign in person, the identification) of the individuals executing US documents?

Answer: The State will confirm the signatory's authority in its review of the agreement and releases. Any attempt to sign the US Agreement without proper authority will be taken very seriously by the Department of Health. They will not accept any such agreement and reserve the right to take additional actions as events warrant.

7. Question: For those who appear in person to sign, will there be a notary public on site?

Answer: Yes. There will be at least one notary public present at each signing day. For facilities that elect to mail in their executed paperwork, please note that the US Agreement needs to be notarized.

8. Question: Does my facility need to execute Appendix H, the Stipulation of Discontinuance?

Answer: This document applies to specific litigation being settled and is to be executed by your facility's attorney of record, if applicable. Specifically, if your facility is a named plaintiff in any lawsuit that includes a claim that is being released in the US (i.e., not reflected on the lists of excluded lawsuits in Appendices D and E), this form must be executed by the attorney representing your facility in that case. If your facility is involved in multiple cases that are being settled under the US, a signed stipulation is required for each. The attorneys of record in the cases that are being settled as part of the US are contacting their clients and arranging for these stipulations. Please note that if your facility was a member of NYAHSa (now LeadingAge NY) when the litigation, NYAHSa v. Daines, was filed in 2009, you do not need to take any action in relation to that case. LeadingAge NY's counsel will execute the required stipulation.

9. Question: When and to whom were the US packages e-mailed?

Answer: The US packages were e-mailed to all current facility operators by LeadingAge NY and NYSHFA between Nov. 24th and Nov. 25th. Generic copies were sent to the other statewide and regional provider associations, accounting firms and law firms. Since that time, copies have been sent to attorneys and former owners, upon request.

10. Question: How does the US work, in general, when a facility has had an ownership change since it was first issued an operating certificate?

Answer: As noted in the previous response, the US documents were sent to current operators who are primarily responsible for executing the Settlement Agreement and Release. There are two types of Releases in the US package – for current owner distributees and for former owner distributees. When executing the current owner distributee Release, the current operator represents that it is entitled to receive the US funds and that it will hold the State

and the US Trustees harmless against any claims, including from any former owners. If a former owner is entitled to US payments, it must execute the US Agreement and the applicable former owner distributee Release (see next question). Every former owner who participated in specific litigation that is being settled must execute a Release. With regard to other former owners who are not entitled to a distribution, the current owner needs to make a good faith effort to attain the execution of a “former owner non-distributee Release”.

11. Question: One or more former owner(s) of a facility are entitled to all or a portion of the US funds based on the terms of a facility purchase and sale agreement and/or on being a named plaintiff in one or more of the lawsuits that is included in and specifically being settled as part of the US. Do the former owner(s) need to execute the US Agreement, the applicable Release and submit Stipulation(s) to Discontinuance?

Answer: *Yes. The former owner(s) should work with their attorneys of record and communicate with the new operator as needed. If necessary, a copy of the US package should be requested from either LeadingAge NY (not-for-profit sponsors) or NYSHFA (for-profit sponsors).*

12. Question: What should a current operator do when they are unable to make any contact with one or more former owners of the facility, and are unable to obtain the assurances needed to execute the Release?

Answer: *The current operator should make “good faith” efforts to contact the former owner(s), and have the purchase agreement available to prove that the former owner(s) are not entitled to any US proceeds. Under those circumstances, the State will not require a former owner Release.*

13. Question: How does the US affect closed facilities?

Answer: *If a closed facility is a named plaintiff in one or more of the lawsuits that is included in and specifically being settled as part of the US, it is entitled to receive the funding associated with the settled litigation. Otherwise, the facility is not entitled to other distributions. An individual with the authority to bind the sponsoring organization to a contract must execute the US Agreement, the applicable Release and submit a Stipulation to Discontinuance. A copy of the US package should be requested from either LeadingAge NY (not-for-profit sponsors) or NYSHFA (for-profit sponsors).*

14. Question: The Release forms include language imposing certain responsibilities on the signer of the Release in case a current or former owner challenges the distribution made to your facility. If an individual is signing on behalf of a corporate owner (not-for-profit or proprietary), a partnership or a unit of government, can this language be altered?

Answer: *Yes. The language may be altered to delete the personal application of the Agreement (i.e. by crossing out references to “I” and “myself” in the applicable Release) if the facility is a corporation with multiple owners or a not-for-profit organization. This is the only language which may be revised in the Release.*

15. Question: The Release forms include the word “CAPTION” on them. What, if anything, does this mean for the individual completing the agreement?

Answer: This reference can be disregarded. The name of the facility and the individual executing the Release will be identified elsewhere in the document.

16. Question: Appendix A to the US Agreement says that the facility “is estimated to receive a total of \$xxx over five years.” Why was this wording used?

Answer: The amount identified in Appendix A is the amount that has been calculated for the facility, and represents the gross total distribution to the facility, which will be paid in five equal installments. The word “estimated” was used because the actual amount that the facility will receive may vary based on: (1) recoupment amounts that will be offset by the State (see Appendix B to the Agreement); (2) potential attorney fees owed; (3) amounts owed to former owners; and (4) potential payments from the Special Appeals Fund Process (for those facilities eligible to participate). As stated in the US Agreement, the five payments represent amounts for five fiscal years, but the State reserves the right to make such payments in a timeframe that is less than five years, including the possibility that the first two installments could be paid in the current State fiscal year, which ends March 31, 2016. In the near future, revised and updated Appendix A forms will be distributed reflective of updates to recoupment amounts and any other known modifications.

17. Question: My facility was notified that it is receiving funding from the “Minimum Facility Payment Fund” and, as a result, is eligible to participate in the “Special Appeals Fund” process. Does my facility need to take any specific action at this time to participate in this process?

Answer: No. Attachment A in the US package describes this process, and indicates that the facility will be asked to sign a release committing to the US and election of the Special Appeals Fund process. This release was not included in the US package that has been transmitted to facilities and other parties. It will be provided to eligible facilities in the near future.

18. Question: When will the US payments actually be made?

Answer: The timing of the payments will be dictated by a series of events including: (1) the speed with which current operators and former owners execute and submit their documents; (2) a determination by the State that there is “universality” (i.e., a sufficient number of facilities participating to proceed); (3) final written CMS approval; (4) State payment approvals; and (5) submission of payments to the US Trustees. The goal is to make one or two of the installment payments by March 31, 2016, the end of the current State Fiscal Year.