

# Webinar: The Universal Settlement of Nursing Home Rate Appeals and Litigation

Continuing Care Leadership Coalition  
Greater New York Health Care Facilities Association  
Healthcare Association of New York State  
LeadingAge New York  
New York State Health Facilities Association  
Southern New York Association

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# Program Outline

- Introduction
- Supporting Documents/Other Resources
- Universal Settlement Payments
- Term Sheet
- Next Steps
- Important Context
- Questions and Answers

# Introduction

- Agreement reached with State
- \$850 million in five installments
- “Universal agreement” to surrender rights to pursue most Medicaid reimbursement appeals/lawsuits
- Facilities asked to review settlement materials and complete online poll by 1/7/15 indicating interest
- Once polling completed, State will decide whether settlement proposal can proceed to next stage

# Supporting Documents/Other Resources

- Universal Settlement overview summary
- Universal Settlement term sheet
- Associations' summary of term sheet
- Each facility's annual/total payment amounts
- DOH master lists of pending rate appeals
- DOH master list of pending lawsuits
- Recording of this webinar

# Universal Settlement Payments

- Payments contingent on meeting all terms of settlement, including State and Federal approvals
- Up to \$850 million total, paid in 4-5 installments of up to \$170 million each (the first two installments may both be paid in one payment)
- Total and annual payments will be reduced by:
  - Offsets of facility liabilities owed to the State (up to 70% of 1<sup>st</sup> year's payment; up to 100% of remaining payments)
  - Amounts allocated to non-participating facilities
- Each member facility has received its schedule of payments under the settlement

# Payments (cont'd)

- Each facility's payment amounts determined based on:
  - \$850M paid in 5 equal installments of \$170M;
  - Statewide pricing transition positive/negative impacts;
  - Settlements of specific lawsuits on pre-2012 rates;
  - Settlements of specific appeals to pre-2012 payments;
  - Guaranteed minimum benefit (greater of \$225,000 or 4.5% of estimated annual operating revenue); and
  - Reserve of up to \$10M for industry-appointed special master to settle specific appeals/suits not otherwise identified (requires facility to qualify for, and forego, guaranteed minimum benefit)

# Payments (cont'd)

- Facility payment amounts under the settlement:
  - Are NOT subject to appeal or revision;
  - MAY be subject to claims of former facility owners;
  - Are NOT subject to audit by the OMIG;
  - WILL be made directly to facilities/former owners (i.e., not through managed care payments);
  - ARE subject to approval by CMS;
  - ARE subject to the 6.8% assessment (payments to former owners will not be assessable);
  - ARE subject to the global spending cap (for purposes of payment timing); and
  - MAY begin as early as SFY 2014-15 (which ends 3/31/15)

# Term Sheet

- Facilities should review the term sheet and summary
- Provisions:
  - Covered appeals, lawsuits and claims
  - Payments
  - Future appropriations
  - Recoupment
  - Cash receipts assessment
  - Payment schedule
  - Withdrawal of equity
  - Excluded rate appeals
  - Excluded litigation



# Term Sheet (cont'd)

- Provisions (cont'd):
  - Process for excluding rate appeals/lawsuits
  - OMIG
  - No collection or enforcement
  - Releases
  - Indemnity
  - CMS approval
  - Universal participation
  - No new rights
  - Reservation of the State's rights
  - Failure to settle
  - Proposed legislation

# Next Steps

- Each facility to review materials and respond to online poll ([https://www.surveymonkey.com/s/Universal Settlement Participation Survey I](https://www.surveymonkey.com/s/Universal_Settlement_Participation_Survey_I))
- Completion of poll and determination by State on whether to proceed
- A “no” vote means you will not participate in the settlement and the state will keep your distribution (assuming the State decides to move forward with the settlement overall)
- Receipt of signed settlement agreement/release from each facility (current and former owners)
- Receipt of lists of excluded appeals/lawsuits from facilities
- Obtain CMS approval of settlement terms and payments
- Obtain DOB approval of payments and ongoing legislative approval of appropriations

# Important Context

- Short timeframe within which to respond
- ALL facilities should use the online poll site to respond
- Consult with attorneys, CPAs, boards and others as needed
- Liabilities to the State, amounts owned to former owners and assessments will reduce net payments
- Payment amounts may not correspond at all to value of pending appeals/lawsuits
- Certain rights to future reimbursement challenges will also be surrendered

# Important Context (cont'd)

- Need to itemize all excluded appeals/lawsuits
- Dollar value of settlement/time value of money
- Future appeals processing:
  - Thousands of unprocessed appeals
  - Hundreds of pending lawsuits
  - Lack of capacity at DOH
  - Subject to annual cap
  - Outcome of “Woodside” case
  - Transition to managed care

# Questions and Answers

- Participants may pose questions during this webinar
- Webinar will be recorded and disseminated
- Accounting and law firms have access to the webinar and supporting materials
- Associations may issue additional written guidance as needed
- Each association has designated one or more contacts for follow-up questions:

# Questions and Answers (cont'd)

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