

MEMORANDUM

TO: Nursing Home Representatives

FROM: LeadingAge New York

DATE: February 1, 2016

SUBJECT: **Nursing Home Universal Settlement Proceeding to Next Steps**

Introduction

Good news! Earlier this afternoon, the State of New York officially declared that facilities' response to the Universal Settlement of Nursing Home Rate Appeals and Litigation ("the Settlement") has met the State's standard for "universality" and the State is prepared to execute the Agreement, pending Centers for Medicare and Medicaid Services (CMS) approval. In other words, there is a sufficient level of interest among current and former facility operators for the Settlement to proceed towards the implementation phase. As previously noted, the federal government must also approve the Settlement before it can be implemented. The State has indicated that they are confident that CMS will approve the payments.

This memorandum provides updates on various aspects of the Settlement, and identifies remaining actions that facilities need to take to facilitate the completion of remaining implementation steps.

Further Steps for Participating Facilities to Take

Survey on Former Owners

In preparation for the implementation phase of the Settlement, LeadingAge New York and Hinman Straub PC (the US trustee assigned to your facility) are seeking to verify that your facility does not have one or more prior owner(s) that may also need to execute a Settlement Release. **To this end, we are asking every facility receiving this memo to complete a [brief survey](#) on the subject by Feb. 8, 2016.** The survey should take only a few moments of your time.

Special Appeals Process

As part of the Settlement packet that you received in Nov. 2015, if eligible, you would have been notified that your facility is eligible to participate in the Special Appeals Fund. Attachment "A" to the Agreement provided an explanation of the Special Appeals Fund. Specifically, to the extent your facility receive funds under the "Minimum Facility Payment Fund," your facility is also eligible for the Special Appeals Fund. The Special Appeals Fund, which includes a total allocation of \$10 million, was designated within the Settlement for certain facilities that have pending rate appeals on matters that are included in the Settlement, but for which the facility believes the value of the appeals exceeds the Minimum Facility Payment they would otherwise have received.

For those eligible facilities, attached to this document is an election form for you to complete and return to Hinman Straub by Feb. 29., 2016, indicating your facility's desire to

participate in the Special Appeals Fund and to provide specific detailed information regarding the rate appeals you seek to have reviewed.

Next Steps

The State's declaration of "universality" triggers a series of next steps in the Settlement. Since the Settlement payments are Medicaid payments, the State needs to receive approval from CMS to receive federal financial participation in the payments.

The two law firms that have been authorized by the State to act as the Settlement trustees – Hinman Straub PC. (the trustee your facility is assigned to) and O'Connell and Aronowitz – will receive the aggregate Settlement payments from the State, and be responsible for dispersing them directly to participating facilities and to certain law firms that will be, in turn, distributing portions of the payments to their client facilities. If any or all of the payment distributions made to facilities by the Settlement Trustees are to be made through electronic funds transfer, facilities' banking information will need to be obtained. Further instructions will be provided as needed.

In order for the correct payments to be made, the State will also need to update the "accounts receivable" (i.e., unrecouped Medicaid liability) amounts for each facility, since portions of these liabilities will be offset against Settlement payments prior to the payments being made to the facility.

Conclusion

If you have any questions on this memo or the attachment, please direct them to Darius Kirstein (dkirstein@leadingageny.org) or Dan Heim (dheim@leadingageny.org) at LeadingAge New York, or call (518) 867-8383.

Any correspondence to the Settlement Trustee may be directed to:

By mail:

Hinman Straub PC
121 State St
Albany, New York 12207
Attention: Universal Settlement

By e-mail:

Sean Doolan, Esq.
sdoolan@hinmanstraub.com

Attachment

SPECIAL APPEALS FUND ELECTION FORM

AS A FACILITY WHO IS RECEIVING FUNDS FROM THE MINIMUM FACILITY PAYMENT FUND, I WISH TO PARTICIPATE IN THE SPECIAL APPEALS FUND AS DESCRIBED IN THE ATTACHED MEMORANDUM.

BY COMPLETING THIS FORM, I AGREE THAT THE FOLLOWING RATE APPEALS, WHICH WOULD OTHERWISE BE SETTLED BY THE UNIVERSAL SETTLEMENT, WILL BE REVIEWED BY AN INDEPENDENT REVIEWER WHO WILL DETERMINE WHETHER PAYMENT IS APPROPRIATE. TO THE EXTENT PAYMENT IS MADE FOR AN APPEALED RATE, THE AMOUNT RECEIVED WILL BE THE VALUE OF THE APPEAL(S) IN EXCESS OF WHAT WOULD OTHERWISE BE RECEIVED FROM THE MINIMUM PAYMENT FUND.

Nursing Home Name: _____

Operating Certificate Number: _____

Number of Appeals for Review: _____

PLEASE LIST THE APPEALS INCLUDED IN THE UNIVERSAL SETTLEMENT FOR WHICH YOU ARE REQUESTING REVIEW:

Rate Appeal Number:
Appeal Item Number (if applicable):
Appeal Date:
Affected Rate Period:
Estimated Value of Appeal:
Issue:

Rate Appeal Number:
Appeal Item Number (if applicable):
Appeal Date:
Affected Rate Period:
Estimated Value of Appeal:
Issue:

Rate Appeal Number:
Appeal Item Number (if applicable):
Appeal Date:
Affected Rate Period:
Estimated Value of Appeal:
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