

MEMORANDUM

TO: Universal Settlement Distributee

FROM: Universal Settlement Designated Trustees

DATE: January 17, 2016

SUBJECT: **Universal Settlement Update and Revised Documents**

This memorandum provides: (1) an update as to the status of the Universal Settlement (“US”) Agreement process, including next steps; (2) a notification that many facilities will need to re-execute Releases due to unauthorized and unilateral revisions to the Releases drafted by the State (3) a revised Appendix A and B; (4) an explanation of how current and former operator distributions will be made; and (5) an explanation of the process for distribution of the Special Appeals Fund.

US Update

As you know, on November 23, 2015, the terms of the US Agreement were finalized by counsel for all involved parties, subject to securing executed Agreements and Releases from the distributees, which is now underway. Under the broad parameters of the US Agreement, the State and the nursing home industry have developed a proposed settlement whereby, in exchange for surrendering most of their rights to pursue most pending Medicaid rate lawsuits and rate appeals and certain future rights to challenge Medicaid reimbursement against the State, facilities would receive up to \$850 million in the aggregate.

The Designated Trustees (*defined below*), together with State representatives, have now begun the process of securing executed US Agreements from all current and former nursing home operators. **We are pleased to report that, as of the date of this memorandum, approximately 98% of all current operators of nursing homes in the State of New York have executed a Universal Settlement (“US”) Agreement.** The State is reviewing each of these executed Agreements and will determine whether there is “universal acceptance” of the Agreement by the nursing home industry. If the State determines that there is “universal” acceptance to the Agreement, the State will agree to the US and the process for distributing payments will commence. The Agreement is also subject to federal government approval. In that regard, the State has engaged in a number of discussions with the Centers for Medicare and Medicaid Services and anticipates federal approval prior to distribution of payments.

Agreement and Release Revisions NOT Agreed Upon By the State

Many facilities have executed Releases which modified certain terms and conditions of the US, including limiting personal liability for failure to abide by the terms of the US. **These revisions were not agreed upon by the State, and, as a result, will be deemed unacceptable and the State will not execute these agreements.** If you are a current or former operator who revised the US Agreement and Release without the expressed approval of the State, you will be notified that the executed Agreement and Release are being rejected. You will, however, be given a limited opportunity to re-submit a Release which has been approved by the State. The re-submission must be done as soon as possible or you will risk not participating in the US Agreement. Those facilities will be notified over the next several days that their executed Release is being rejected and a new

one must be executed in order to participate in the US. We ask that, if acceptable, you re-execute the Release and return it to us as soon as possible.

Appendix A and Appendix B

Appendix “A” to the US Agreement reflects the dollar allocation to each facility under the Agreement. The amount includes payments received by every facility and payments received as a result of specific litigation being settled. As a result of revised settlements and resulting revisions to the “Minimum Facility Payment Fund” the amount of the final allocation may have slightly increased for some facilities. Included herein is your final Appendix “A” allocation. This amount should reflect the amount to be allocated to the facility. The only adjustments to these amounts will be for amounts that should go to former owners, Medicaid recoupments owed to the State (Appendix “B”) and for payments to your own individual attorney for legal fees relating to specific litigation being settled. The Appendix “A” included in this packet will replace the Appendix initially received and will be incorporated into the US Agreement.

Appendix “B” reflects an accounts receivable balance owed by your facility to the State for Medicaid liabilities. If you recall, the original Appendix “B” reflected liabilities as of June 18, 2015. The enclosed Appendix “B” is updated to reflect liabilities as of December 16, 2015. **If your home is still awaiting a state authorized update to Appendix “C” (listing of excluded appeals) please notify Darius Kirstein at dkirstein@leadingageny.org or Carl Pucci at cpucci@nyshfa.org.**

Former Owners/Operators

If you have purchased your facility from a prior owner/operator, you are also obligated to make your best efforts to obtain a Release from that former owner/operator using the relevant release form included in Appendix G. Please read the US Agreement carefully for your obligations in obtaining the former owner/operator Releases. **To the extent a former owner/operator of a facility has notified the Designated Trustees of an interest in any portion of the US distribution, no distribution shall be made under the contested amounts until an agreement is reached between the current and former owner/operator.** We ask that you make best efforts to resolve any disputes between former and current owners. In that regard, for purposes of dividing allocations which are not expressly related to the settlement of specific litigation such as the Minimum Facility Payment Fund (“bucket 8”) or the General Rate Appeals Payment Fund (“bucket 1”) , please be mindful of the language of the US Agreement which provides that the funds are being paid in exchange for the settlement of the Facilities’ pending rate appeals and pending litigation that dispute or contest any aspect of the prior reimbursement methodology in effect prior to January 1, 2012.

Special Appeals Fund

As part of the US Agreement packet that you received, if eligible, you would have been notified that you may participate in the Special Appeals Fund. Attachment “A” to the Agreement provides an explanation of the Special Appeals Fund. Specifically, to the extent you receive funds under the “Minimum Facility Payment Fund”, you are also eligible for The Special Appeals Fund. The Special Appeals Fund, which includes a total allocation of \$10 million, was designated within the US for certain facilities that have pending rate appeals on matters that are included in the US, but for which the facility believes the value of the appeals exceeds the Minimum Facility Payment they would otherwise have received. Please understand that this fund relates only to appeals that

are included – and will be eliminated as part of – the US; excluded appeals (those appeals not covered by the US) will be subject to adjudication by the Department of Health outside of the US based on the longstanding rate appeal process.

For those eligible facilities, attached to this packet is an election form for you to complete and, within 45 days, return it to either of the Designated Trustees, indicating your desire to participate in the Special Appeals Fund and to provide specific detailed information regarding the rate appeals you desire to have reviewed.

Designated Trustees

As you know, the collection and verification of the Agreements and Releases has been undertaken by two law firms selected as payment administrators and US Trustees. The two law firms are Hinman Straub PC and O’Connell & Aronowitz. Together with representatives of the State, the two firms have reviewed each executed agreement and will assist in the distribution of the US proceeds throughout the entire payment process. For this purpose, your facility has been assigned to one of two law firms. As US Trustees and payment administrators, the two law firms are being compensated for expenses and related costs for this undertaking in the total amount of three million dollars, to be divided equally. This payment does not reduce or in any way impact the amount paid to any individual distributee under the US Agreement.

1) Hinman Straub PC
121 State St
Albany, New York 12207

2) O’Connell & Aronowitz
54 State St
9th Floor
Albany, New York 12207

Enclosures

The following updated documents are also attached to the e-mail used to transmit this letter:

- Appendices to the Settlement Agreement
 - Appendix A: Dollar Allocation to Facility
 - *Lists allocations of payments to each Distributee and/or the Distributee’s designated agent*
 - Appendix B: Accounts Receivable Balance
 - *Lists Medicaid recoupments owed to the State by each Distributee*
 - *Release*
- Attachment A: Election of Special Appeals Fund Process
 - *Provided only to facilities that are eligible to participate in this process*