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MEMORANDUM

TO: RHCF Members

FROM: Patrick Cucinelli, Senior Director of Public Policy Solutions

DATE: April 23, 2010

SUBJECT: **Good News on OMIG Bed Hold Audits!**

ROUTE TO: Administrator, CFO, Corporate Compliance

ABSTRACT: OMIG may be moving towards withdrawing bed hold audit findings.

Introduction

There are indications that the decision in the *Metropolitan Jewish Geriatric Center* (MJGC) bed hold case may be prompting the [Office of Medicaid Inspector General \(OMIG\)](#) to alter its enforcement of Medicaid bed hold findings. The details of the MJGC case are available in [NYAHS Doc ID # n00004074](#).

Recent Update

Until recently, OMIG has not withdrawn any bed hold audit findings or signaled how it will proceed with the many bed hold audits that are pending at various stages of the administrative process in light of the MJGC case, and comments from OMIG have been ambiguous. There has also been a subsequent legal finding in the case of *Lemberg Home & Geriatric Institute*, where the ALJ upheld OMIG's bed-hold audit findings. There are extenuating circumstances in the Lemberg case, which call into serious question whether this decision could be viewed as a reasonable precedent.

OMIG also proceeded to hearing against another nursing home, *Rego Park Nursing Home*. In that case, the administrative hearing was closed, and the parties submitted post-hearing briefs. Until this past week, OMIG had not conceded the applicability of the ruling in *Metropolitan Jewish Geriatric Center*, and continued to defend the audit findings premised on the same

ground, allegedly missing hospital documentation, cited in the *Metropolitan* case as well as in scores of other audit reports issued to nursing homes across the State.

NYAHSA is pleased to report, however, that last week OMIG agreed to withdraw the audit findings against *Rego Park*. In light of this development, it appears more likely that OMIG may similarly withdraw audit findings made against other nursing homes, provided that the facilities timely objected to the audit findings and otherwise preserved their administrative-hearing rights.

Conclusion

Members currently in the process of dealing with OMIG bed hold audit findings should contact their legal counsel and make certain that they are aware of this latest development, and that all your legal rights and options are being pursued.

NYAHSA and our counsel continue to monitor further developments and advise members as appropriate. Please contact me at pcucinelli@nyahsa.org or call 518-449-2707 ext. 145 or Elliot Frost at efrost@nyahsa.org, ext. 140 with any questions.