

OCTOBER 20, 2011

NEW FEDERALLY REQUIRED INDEPENDENT IDR PROCESS FOR NURSING HOMES

Pursuant to Section 6111 of the Affordable Care Act enacted on March 23, 2010, and the final rule published on March 18, 2011 in the *Federal Register*, a nursing facility must be offered the opportunity to request an Independent Informal Dispute Resolution (IIDR) if the Centers for Medicare & Medicaid Services (CMS) imposes a civil monetary penalty (CMP) against the facility and the CMP amounts are subject to being collected and placed in an escrow account. Initially, the CMPs collected will be limited to the most serious deficiencies.

Under this new rule, State Survey Agencies (SAs) must have in place no later than January 1, 2012, a functioning IIDR process containing key elements: More specifically, the IIDR process must contain provisions: (1) that an offer notification and relative information pertaining to the process (in the Notice of Imposition of a CMP letter) will be sent to the facility within 30 days of the imposition of a CMP that will be collected and escrowed; (2) whereby the provider must request the IIDR within 10 calendar days after receipt of the notice letter, and the SA must complete the process within 60 calendar days after receipt of the facility's request; (3) for the IIDR process to generate a written record prior to the collection of the CMP; and (4) for notification to be provided to the resident or the resident's representative(s) and the State's long term care ombudsman by the SA to allow for any comments prior to the completion of the IIDR process.

The IIDR process must be approved by CMS and conducted by the SA or a CMS-approved entity that does not have a conflict of interest. Any expenses incurred by the SAs are eligible for federal funding. However, SAs must submit an estimated budget by November 30, 2011, in addition to its IIDR process. States may not charge facilities for conducting an IIDR except in instances where a facility does not qualify for an IIDR but one is provided by the State at its own discretion. Under this scenario, the State may elect to charge the facility a user fee for its own processes.

For more-detailed information and to review the IIDR sample worksheet, please visit: 2011-6144.

If you have questions or concerns regarding the foregoing or would like additional information, please contact your regular Hall Render attorney, or Todd Selby at tselby@hallrender.com or 317.977.1440; Brian Jent at bjent@hallrender.com or 317.977.1402; or David Bufford at dbufford@hallrender.com or 502.568.9368.