DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Jacob K. Javits Federal Building
26 Federal Plaza, Room 37-130
New York, New York 10278-0063

Northeast Division of Survey & Certification

May 6, 2020

By Fax: (973) 383-4665
Email: cbradford@andoversrc.com

Cynthia Bradford, Administrator
Andover Subacute And Rehab II
99 Mulford Road
Andover, NJ 07821-1279

Enforcement Cycle Starting Survey: April 21, 2020 - Immediate Jeopardy Cited removed before the end of the survey – **continued non-compliance**.
Immediate Jeopardy Period: April 6, 2020 through April 20, 2020 (15 Days)
Enforcement Remedies - Pending:
Mandatory Three Month Denial of Payment for New Admissions effective July 21, 2020
Mandatory Six Month Termination effective October 21, 2020
Nurse Aide Training and Competency Evaluation Program (NATCEP) Prohibition – Imposed: Effective November 14, 2018 through November 13, 2020.
Civil Money Penalty (CMP) - Imposed: A CMP of **$14,565.00** Per Day has been imposed for the fifteen (15) days of Immediate Jeopardy (IJ) and Substandard Quality of Care (SQC) that began April 6, 2020 and ended on April 20, 2020. The total accrued amount for this portion of your CMP is **$218,475.00** - the CMP was based on the Federal Survey and deficiencies cited at an IJ at Federal Tag: F0880 -- S/S: K -- § 483.80(a)(1)(2)(4)(e)(f) -- Infection Prevention & Control. CMS is also imposing a CMP of **$110.00** Per Day beginning April 21, 2020, based on the continued non-compliance. The total of this portion of your CMP as of the date of this letter is **$1,760.00**. This portion of your CMP will continue to accrue until substantial compliance is achieved or termination occurs. **The total CMP accrued as of the date of this letter is $220,235.00.**
POC Due Date: May 16, 2020

Dear Administrator: CMS Certification No. 31-5248

On April 21, 2020, the Centers for Medicare & Medicaid Services (CMS) completed an IJ complaint survey at Andover Subacute And Rehabilitation II to determine if your facility was in compliance with Federal requirements. The survey revealed that your facility was not in substantial compliance. The findings from this survey are documented on the enclosed form CMS 2567.

Your Enforcement Cycle began with the April 21, 2020 survey. All surveys conducted after April 21, 2020, will become a part of this Enforcement Cycle. The enforcement cycle will not end until substantial compliance is achieved for all deficiencies from all surveys within an enforcement cycle. Facilities are expected to achieve and maintain continuous substantial compliance.

All references to regulatory requirements contained in this letter are found in Title 42 of the Code of Federal Regulations. A PoC for the deficiencies must be submitted to this office within ten (10) calendar days of your receipt of this letter.

CMS is imposing remedies based on all the deficiencies cited on the Form CMS-2567. All deficiencies cited the Form CMS-2567 require a Plan of Correction (POC). Deficiencies cited at or above a scope/severity level of 'D' are subject to remedies.

SURVEY RESULTS
On April 21, 2020, the Centers for Medicare & Medicaid Services (CMS) completed an IJ complaint survey at Andover Subacute And Rehabilitation II to determine if your facility was in compliance with Federal requirements. The survey revealed that your facility was not in substantial compliance. The findings from this survey are documented on the enclosed form CMS 2567.

PLAN OF CORRECTION (PoC)
A PoC for the deficiencies cited for the survey ending April 21, 2020 must be submitted to this office within ten (10) calendar days of your receipt of this letter.

To be acceptable, a provider's POC must include the following:

- What corrective action(s) will be accomplished for those residents found to have been affected by the deficient practice;

- How you will identify other residents having the potential to be affected by the same deficient practice and what corrective action will be taken;

- What measures will be put into place or what systemic changes you will make to ensure that the deficient practice does not recur; and

- How the corrective action(s) will be monitored to ensure the deficient practice will not recur, i.e., what quality assurance program will be put into place. The PoC must be integrated into the quality assurance system. At the revisit, the quality assurance plan will be reviewed to determine the earliest date of compliance. If there is no evidence of the quality assurance being implemented, the earliest correction date will be the date of the revisit; and

- Include dates when corrective action will be completed. The corrective action completion dates must be written in the completion date column within acceptable time frames. If the PoC is unacceptable for any reason, you will be notified in writing by this office. If the PoC is acceptable, you will be notified via telephone, e-mail, etc. Please note that the facility is ultimately accountable for compliance, and that responsibility is not alleviated in cases where notification regarding the acceptability of the facility’s PoC is not made timely. The PoC will serve as the facility’s allegation of compliance.

Please indicate your corrective actions on the "Provider Plan of Correction", keying your responses to the deficiencies on the left of the CMS-2567. Additionally, indicate your anticipated

completion dates in the column labeled "Completion Date." Remember the Director or representative must sign, date and title the bottom of the first page (X6) on the CMS 2567 form. POC must be submitted VIA E-MAIL no later than May 16, 2020 to Luz.Sanchez@cms.hhs.gov and Maury.Meredith@cms.hhs.gov.

You should also be aware that copies of this form will be made available to the public if requested. In addition, this form is disclosed to the public as a document in itself without attachments; therefore, if attachments are utilized, be certain that you have explained the content of the attachments fully within the PoC.

IMPOSITION OF REMEDIES

IMPOSITION OF CIVIL MONEY PENALTY (CMP)

As a result of the April 21, 2020 survey, in accordance with §§ 1819(h) and 1919(h) of the Social Security Act, and the enforcement regulations specified at 42 CFR Part § 488, CMS has imposed a Civil Money Penalty (CMP). A CMP of **$14,565.00** Per Day has been imposed for the fifteen (15) days of Immediate Jeopardy (IJ) and Substandard Quality of Care (SQC) that began April 6, 2020 and ended on April 20, 2020. The total accrued amount for this portion of your CMP is **$218,475.00** - the CMP was based on the Federal Survey and deficiencies cited at an IJ at Federal Tag: F0880 -- S/S: K -- § 483.80(a)(1)(2)(4)(e)(f) -- Infection Prevention & Control. CMS is also imposing a CMP of **$110.00** Per Day beginning April 21, 2020, based on the continued non-compliance. The total of this portion of your CMP as of the date of this letter is **$1,760.00**. This portion of your CMP will continue to accrue until substantial compliance is achieved or termination occurs. **The total CMP accrued as of the date of this letter is $220,235.00.**

FACTORS USED IN DETERMINING THE AMOUNT OF YOUR CMP AND REQUIREMENTS FOR FINANCIAL HARDSHIP REQUESTS

In determining the amount of the CMP that we are imposing, we will consider your facility's history of noncompliance, including repeated deficiencies; its financial condition; the factors specified in the Federal requirement at 42 CFR § 488.404; and the facility's degree of culpability, including, but not limited to, neglect, indifference, or disregard for resident care, comfort or safety. (Under 42 CFR § 488.438(f)(4), the absence of culpability is not a mitigating circumstance in reducing the amount of the penalty.)

If you believe that you have documented evidence that should be considered in establishing the amount of the CMP, the following documents should be submitted to our office within fifteen (15) days of your receipt of this notice of CMP imposition:

1. A letter outlining the specific financial hardship;
2. Current balance sheet;
3. Current income statement;
4. Cash flow statement;
5. Most recent full year financial statements prepared by an independent accounting firm. Be certain to include footnotes;
6. Most recent full year financial statements of the home office and/or related entities;

7. Disclosure of expenses and amounts paid/accrued to the home office and/or other related entities;
8. Copy of tax returns for the preceding two years;
9. Documentation of any/all financing arrangements including mortgages, long term debt and lines of credit;
10. Copy of a letter from the Bank denying the nursing home a loan;
11. Provide an organizational chart with an explanation/description concerning the related entities; and,
12. Signed copy of an attestation statement by the Administrator, CFO, CEO, and owner (The attestation statement form will be sent to you upon submission of your request for a financial hardship determination.)

Should you decide to waive your appeal rights within 60 calendar days of your receipt of this notice, CMS will reduce your CMP by thirty-five percent (35%). Your waiver of appeal rights must be submitted in writing or via e-mail to Luz.Sanchez@cms.hhs.gov. Should you decide to appeal this action, the CMP will be subject to immediate payment into an escrow account. Your facility will be notified at a later date of how and when the escrow payment will occur.

CMP DISCOUNTS & WAIVING APPEAL RIGHTS

In order to receive the 35% discount, your facility must waive its right to an appeal/ hearing, in writing, within 60 calendar days of the date of its receipt of this notice. A letter indicating the facility is waiving its appeal rights must be emailed to Luz.Sanchez@cms.hhs.gov by July 5, 2020.

TERMINATION OF PROVIDER AGREEMENT

Your provider agreement will automatically be terminated effective October 21, 2020**,** unless substantial compliance is achieved and verified by the Centers for Medicare & Medicaid Services (CMS) that it was achieved on or before October 21, 2020. We are required to provide the general public with a notice of an impending termination. We will publish a notice on the CMS website at - https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Termination-Notices.html, at least 15 days prior to the termination date if substantial compliance is not achieved.

DENIAL OF PAYMENT FOR NEW ADMISSIONS

Denial of Payment for New Admissions will automatically be imposed July 21, 2020, unless substantial compliance is achieved and verified by the Centers for Medicare & Medicaid Services (CMS) that it was achieved on or before July 21, 2020. This action is mandated by the Social Security Act at §1819(h)(2)(D) and §1919(h)(2)(C) and Federal regulations at 42 CFR 488.417(b). Once imposed, denial of payment for new admissions will remain in effect until substantial compliance is achieved or termination occurs.

WARNING OF NURSE AIDE TRAINING (NATCEP) PROHIBITION

Please note that Federal law, as specified in the Social Security Act at §1819(f)(2)(B) and §1919(f)(2)(B), prohibits approval of nurse aide training and competency evaluation programs and nurse aide competency evaluation programs offered by, or in, a facility which, within the previous two years, has operated under a §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(ii) waiver (i.e., waiver of full-time registered professional nurse); has been subject to an extended or partial

extended survey as a result of a finding of substandard quality of care; has been assessed a total civil money penalty of not less than $11,160.00; has been subject to a denial of payment, the appointment of a temporary manager or termination; or, in the case of an emergency, has been closed and/or had its residents transferred to other facilities.

INFORMAL DISPUTE RESOLUTION (IDR)

In accordance with §488.331, you have one opportunity to question cited deficiencies through an Informal Dispute Resolution (IDR). Your request for an IDR must be sent to Maury Meredith to the following email address Maury.Meredith@cms.hhs.gov and via email to Luz Sanchez at Luz.Sanchez@cms.hhs.gov:

This request must be sent during the same ten (10) calendar days you have for submitting a PoC for the cited deficiencies. An incomplete IDR process will not delay the effective date of any enforcement action. IDR in no way is to be construed as a formal evidentiary hearing. It is an informal administrative process to discuss deficiencies. If counsel will accompany you, you must indicate this in your request for IDR so that we may also have counsel present. You will be advised verbally of our decision relative to the informal dispute, with written confirmation to follow. Informal dispute resolution for the cited deficiencies will not delay the imposition of any enforcement actions imposed. A change in the seriousness of the noncompliance may result in a change in the remedy selected. When this occurs, you will be advised of any change in remedy.

OPPORTUNITY FOR INDEPENDENT INFORMAL DISPUTE RESOLUTION (IIDR)
CMS has determined that due to the seriousness of these deficiencies, under the requirements at 42 CFR § 488.431, this CMP will be subject to escrow and your facility may request an Independent Informal Dispute Resolution (IIDR). Your request for an IIDR which involves Federal surveys conducted solely by Federal surveyors or Federal contracted surveyors, must be sent in writing to the CMS Regional Office no later than 10 calendar days from the date of your receipt of this letter.

Your request for an IIDR should be submitted in writing to CMS Regional Office:

RONYdsc@cms.hhs.gov, Luz.Sanchez@cms.hhs.gov and Maury.Meredith@cms.hhs.gov

With a cc sent to:

CMSQualityAssurance@cms.hhs.gov and Francis.Adanuty@cms.hhs.gov

You must send **all documentation**, such as facility policies and procedures, resident medical record information or other information on which you rely on to dispute the survey findings, to both the CMS Regional Office and the **CMS IIDR Contractor**:

CMS Regional Office Email:

RONYdsc@cms.hhs.gov, Luz.Sanchez@cms.hhs.gov and Maury.Meredith@cms.hhs.gov

CMS IIDR Contractor Email: ccompher@hcmsllc.com

Christina Compher
Healthcare Management Solutions, LLC
1000 Technology Drive, Suite 1310
Fairmont, WV 26554
Direct Line: 615.967.1169 | FAX: 304.368.0389

Please request an acknowledgement of your submitted material to confirm receipt.

Healthcare Management Solutions, LLC will conduct the review and send a final written report to the CMS Regional Office, which will notify you of the outcome.

APPEAL RIGHTS

If you disagree with this determination made based on the April 21, 2020 survey, you or your legal representative may request a hearing before an administrative law judge of the Department of Health and Human Services, Departmental Appeals Board. The appeal rights are set out in the Federal regulations at 42 CFR § 498.40, et seq. The regulation explains the appeal rights following the determination by the CMS as to whether such entities [meet/continue to meet] the requirements for enrollment/participation in the Medicare program. Filing an appeal will not stop any termination action by CMS.

The following information is required with all Appeal requests:

- Your legal business name.
- Your Medicare PTAN (if applicable).
- Tax Identification Number (TIN) or Employer Identification Number (EIN).
- A copy of CMS Regional Office (RO) decision.

An appeal/request for hearing must be filed no later than sixty (60) calendar days from the date of your receipt of this letter. Upon appeal, any assessed Civil Money Penalty (CMP) will be due for payment within fifteen (15) days to the CMS Escrow account. Instructions will be sent at a later date indicating how, where and when to send payment.

<u>You must file your appeal electronically at the Departmental Appeals Board Electronic Filing System Website (DAB E-File) at https://dab.efile.hhs.gov.</u>

To file a new appeal using DAB E-File, you first need to register a new account by:

(1) clicking Register on the DAB E-File home page;
(2) entering the information requested on the "Register New Account" form; and
(3) clicking Register Account at the bottom of the form. If you have more than one representative, each representative must register separately to use DAB E-File on your behalf. The e-mail address and password provided during registration must be entered on the login screen at https://dab.efile.hhs.gov/user_sessions/new to access DAB E-File. A registered user's access to DAB E-File is restricted to the appeals for which he is a party or authorized representative.

Once registered, you may file your appeal by:

(1) clicking the File New Appeal link on the Manage Existing Appeals screen;
(2) then clicking Civil Remedies Division on the File New Appeal screen; and,
(3) entering and uploading the requested information and documents on the "File New Appeal-Civil Remedies Division" form.

At a minimum, the Civil Remedies Division (CRD) requires a party to file a signed request for hearing and the underlying notice letter from CMS that sets forth the action taken and the party's appeal rights. All documents must be submitted in Portable Document Format ("PDF"). Any document, including a request for hearing, will be deemed to have been filed on a given day, if it is uploaded to DAB E-File on or before 11:59 p.m. ET of that day. A party that files a request for hearing via DAB E-File will be deemed to have consented to accept electronic service of appeal-related documents that CMS files, or CRD issues on behalf of the Administrative Law Judge, via DAB E-File. Correspondingly, CMS will also be deemed to have consented to electronic service. More detailed instructions on DAB E-File for CRD cases can be found by clicking the CRD E-File Procedures link on the File New Appeal Screen for CRD appeals. If you have any questions about the CRD E-File process, please contact 608-301-2787 between the hours of 8:00AM and 4:00 PM.

You are required to e-file your appeal request unless you do not have access to a computer or internet service. In such a rare circumstance, you may file in writing, but must provide an explanation as to why you cannot file submissions electronically and request a waiver from e-filing in the mailed copy of your request for a hearing. Written request for appeals must also be filed no later than sixty (60) calendar days after the date this letter is received, and must be submitted to the following address: Department of Health and Human Services, Departmental Appeals Board, MS 6132, Civil Remedies Division, 330 Independence Avenue, S.W., Cohen Building, Room G-644, Washington, D.C. 20201.

Important: The Administrator of Records should notify the CMS Regional Office if the facility files an appeal. The notification to CMS RO should be emailed to Luz.Sanchez@cms.hhs.gov and RONYdsc@cms.hhs.gov.

A request for a hearing should identify the specific issues and the findings of fact and conclusions of law with which you disagree. It should also specify the basis for contending that the findings and conclusions are incorrect. You may be represented by counsel at a hearing at your own expense.

REMINDER:
Our letter sets forth specific timeframes to which your facility must comply:

- An acceptable Plan of Correction must be submitted to the Regional Office within 10 calendar days of your receipt of this notice.
- A request for an IDR of the survey findings, must be made within 10 calendar days of your receipt of this notice per the instructions noted above. Requesting an IDR will not stop the imposition of any enforcement remedy.

- A request for reconsideration of the amount of the CMP based on hardship must be made within 15 calendar days of your receipt of this notice per the instructions noted above.
- A request for an IIDR of the findings, must be made within 10 calendar days of your receipt of this notice per the instructions noted above. Requesting an IIDR will not stop the imposition of any enforcement remedy.
- A request for appeal must be made electronically, at the Departmental Appeals Board Electronic Filing System Website (DAB E-File at https://dab.efile.hhs.gov, per the instructions noted above, within 60 calendar days of the date of your receipt of this notice. Only in rare instances where a provider does not have the means to file an appeal electronically will a written appeal be accepted. An IDR/IIDR that has not been completed will not stop the time clock for appealing an action, nor will it prevent the imposition of any enforcement remedy, including termination.
- A waiver of appeal rights must be submitted per the instructions noted above, this must be done within 60 calendar days of the date of your receipt of this notice in order for you to receive any discount.
- The imposed CMP is subject to escrow if your facility appeals this action. Your facility will be notified at a later date of how and when the escrow payment will occur.

If you have any questions regarding this matter, please contact Luz Sanchez, of my staff, at (212) 616-2325 or via e-mail at Luz.Sanchez@cms.hhs.gov.

Sincerely,

Maury L. Meredith, Captain, USPHS
Acting LTC Branch Manager
Northeast Survey & Enforcement Division
Survey & Operations Group

Enclosures: CMS-2567 Form & Residents Roster

cc:
State Survey Agency
State Medicaid Agency
Novitas Solutions Inc.