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TO: Administrators / Controllers / Owners

FROM: Joe Martello, CPA
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RE: Withdrawal of Equity/Transfer of Assets

Withdrawal of Equity/Transfer of Assets

On October 15, The New York State Court of Appeals upheld the provision of Public Health Law (PHL) Section 2808(5)(c), which restricts the withdrawal of equity or transfer of assets.

What does this mean?

Effective April 1, 2010, **NO** non-public residential health care facility, whether operated as a for-profit facility or as a not-for-profit facility, may withdraw equity or transfer assets which in the aggregate exceed three percent of such facility's total reported annual revenue for patient care services, based on the facility's most recently available reported data, without the prior written approval of the commissioner.

How do I get approval?

At this time, the department of health has not issued an update to the 2009 Withdrawal of Equity form. Facilities who wish to withdraw equity under this provision should consult with their legal or accounting advisors to determine the appropriate method of submitting such a request.

The commissioner is required by law to make a decision within 60 days of receipt. Facilities should submit requests via certified or registered mail

Criteria used in evaluating requests:

- Overall financial condition
- Any indications of financial distress
- Whether the facility is delinquent in any payment owed to the department
- Whether the facility has been cited or immediate jeopardy or substandard quality of care
- Other factors as the commissioner deems appropriate

Failure to comply:

Failure to obtain approval prior to withdrawal of equity may subject a facility to penalties not to exceed 10% of amounts withdrawn without permission and a requirement to replace the withdrawn equity/assets.

Questions?

If you have any questions, please, contact Joe Martello directly either by phone or email (jmartello@horanmm.com)