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Subject: Nursing Home Issue

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### **Quick Background Information:**

**Owner:** In 2006, Avi Klein, through an entity called ASK Holdings, LLC, acquired an indirect ownership interest in Palmetto Health.

**Offense:** On June 24, 2014, Klein was indicted by the U.S. Attorney's Office for the Western District of Virginia as a result of unlawful conduct that Klein had engaged in relating to the operations of a Virginia skilled nursing facility. On August 24, 2015, Klein pled guilty to racketeering in violation of 18 U.S.C. §§ 1962(d) and 1961. Klein was later excluded from Medicare, Medicaid or other federal health care programs, effective August 24, 2015, by the U.S. Department of Health & Human Services, Office of Inspector General.

<https://www.justice.gov/usao-wdva/pr/operators-brian-center-health-and-rehabilitation-center-indicted>  
<http://www.yourlawyer.com/blog/multiple-felony-charges-made-in-large-nursing-facility-scandal/>

Eight nursing facilities are affected in SC. Approximately 107-120 Medicare residents and 548 Medicaid residents (number has decreased from original number of ~ 737 residents)

Per CMS, the provider group did not inform the Centers for Medicare and Medicaid Services (CMS) of the racketeering charges nor disclose that Mr. Klein had been convicted. As a result of his conviction, Mr. Klein should have divested his interest in the nursing homes. According to CMS Regional staff Mr. Klein did not divest his ownership interest and as a result, CMS Office of Program Integrity began the process of terminating their Medicare provider agreement. The provider filed an appeal with the federal Administrative Law Judge.

### **Recent Events:**

Prior to the ALF decision, CMS Program Integrity offered a settlement to the provider. The settlement entailed quarterly monitoring of the facilities for three years. The provider did not accept the settlement.

On January 31, 2017, the federal Administrative Law Judge ruled in support of CMS upholding their decision to terminate Medicare provider agreements with the eight facilities.

### **Advocacy Efforts:**

We (Long Term Care Ombudsman, Medicaid, DHEC Certification) have expressed to CMS staff that SC does not have 668 open beds available. The last projected number of open beds was 117. The effect on the residents and the potential domino effect of the surrounding economy in the towns was also conveyed.

As of today, CMS is in the midst of determining if they can offer the settlement to the provider again. They are researching the law/regulations to determine if this can be

done now that the AL J has made the final ruling. Per DHEC this (determining the ability to offer a settlement) may take an additional week.

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